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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-9041

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC, BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Respondents.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

—

Brunswick Corporation petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered on August 29, 1975.[1]

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1. The respondents herein have also filed a petition for a writ of certiorari from that same judgment. See **Treadway Companies, Inc. et al. v. Brunswick Corporation,** October Term 1975, No. 75-770.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Third Circuit (App. *infra*, pp. 1a-32a) is reported at 523 F. 2d 262. The opinions of the United States District Court for the District of New Jersey (App. *infra*, pp. 33a-60a) are reported at 364 F. Supp. 316 (D. N. J. 1973) and 389 F. Supp. 996 (D. N. J. 1974).

JURISDICTION.

The judgment of the Court of Appeals was entered on August 29, 1975. On November 5, 1975, Mr. Justice Brennan extended petitioner's time for filing a petition for writ of certiorari to and including December 27, 1975 (No. A-421).

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). Jurisdiction in the District Court was based on 15 U. S. C. §§ 15 and 26.

QUESTIONS PRESENTED.

In the words of the Court of Appeals, this is a case "of first impression nationally," explores "largely virgin antitrust territory," and "obviously has far-reaching ramifications" (App. *infra*, pp. 6a, 7a, 19a). It presents an unprecedented situation in which the Court of Appeals held that respondents had adduced sufficient evidence to get to the jury on a claim that petitioner's "acquisitions" of local bowling centers as a means of protecting its security interest in defaulted properties, violated Section 7 of the Clayton Act and caused "injury" to respondents (operators of competing centers), notwithstanding that the "acquisitions" were from companies engaged solely in the operation of intrastate enterprises, that the "acquisition" and operation of the bowling centers by petitioner did not result in any lessening of competition or monopoly, that respondents were seeking to recover for "injuries" resulting from the mere continued presence in the market of the "acquired" centers, and that the entire damage case was based on the premise that the "acquired" centers would have failed and gone out of business had the "acquisitions" not occurred. The questions presented are:

1. Does the mere continued presence in certain local markets of retail establishments allegedly "acquired" by a "deep pocket" manufacturer in violation of Section 7 of the Clayton Act afford a basis for competing retailers to recover damages under Section 4 of the Clayton Act when there is no proof that the "acquisitions" resulted in any lessening of competition or monopoly in those markets?

2. Does not the "failing company" principle require dismissal of a treble-damage action based on alleged violations of Section 7 of the Clayton Act where the plaintiffs'

entire damage theory is based on the premise that the "acquired" businesses would have failed and disappeared from the market had the defendant not kept them alive by making the challenged "acquisitions"?

3. Where a private plaintiff fails to prove that the "acquired" companies were engaged in interstate commerce and that the challenged "acquisitions" had an effect on interstate commerce, is it not incumbent on a reviewing court to dismiss the claim that the "acquisitions" violated Section 7 of the Clayton Act?

STATUTES INVOLVED.

Section 2 of the Sherman Act, 15 U. S. C. § 2, provides

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 4 of the Clayton Act, 15 U. S. C. § 15, provides:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

The first paragraph of Section 7 of the Clayton Act, 15 U. S. C. § 18, provides:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

STATEMENT.

This petition seeks review of a decision of the United States Court of Appeals for the Third Circuit upholding treble-damage claims premised on alleged violations of Section 7 of the Clayton Act. This is the first case in which a private plaintiff has ever been awarded "damages" for a claimed violation of Section 7 and it presents for decision critical questions of fundamental antitrust policy involving the meaning of Section 7 and the extent to which an alleged violation of that section may furnish a basis for a claim for money damages under Section 4 of the Clayton Act.

These significant antitrust issues arise in the framework of the recreational bowling industry. Petitioner was one of the two major American manufacturers of bowling equipment. Respondents are three subsidiaries of Treadway Companies, Inc. which, through its subsidiaries, operates a number of bowling centers throughout the United States (109a-112a).[2] Respondents operate bowling centers in Pueblo, Colorado; Paramus, New Jersey; and near Poughkeepsie, New York.

In the past twenty years, the industry has experienced a period of marked prosperity (the latter 1950's), then a period of serious decline (the 1960's), and more recently a period of general improvement (the 1970's).

The industry was in its infancy until the introduction of automatic pinsetting machines in the mid 1950's. This

2. This action was instituted by Treadway Companies, Inc. (formerly known as "National Bowl-O-Mat Corporation") and ten of its wholly-owned subsidiaries. Respondents were the only plaintiffs in whose favor a judgment was rendered (68a-72a, 104a-105a).

Record references herein are to the appendix in the court of appeals.

equipment revolutionized the industry and bowling increased in popularity. Local bowling centers thrived and new bowling centers sprang up everywhere. During this growth period petitioner sold large quantities of automatic pinsetters and bowling lanes to operators of local bowling centers (866a-868a, 1563a-1573a).[3]

However, because the initial outfitting of a bowling center involves a substantial capital investment, petitioner could not sell its equipment for cash but, instead, sold it for commercial paper, much of which eventually turned out to be worth a great deal less than face value. Petitioner sold its pinsetters and lanes to bowling center operators by means of conditional sales agreements under which the purchaser made a down payment and agreed to pay the balance of the purchase price in installments over a period of years, with petitioner retaining a security interest in the equipment. While petitioner had no difficulty collecting the installment payments during the boom period of the 1950's, the early 1960's brought about a complete reversal. The bowling industry went into a sharp decline and petitioner ran into a nightmare of collection problems (1569a-1584a). The Court of Appeals, in its opinion below, accurately summarizes the situation as follows (App. *infra*, pp. 7a-8a):

> "Simultaneously with the decline in the industry there occurred a collection problem. Defaults on equipment loans became commonplace. Numerous bowling center proprietors were in such hopeless financial straits that it became clear that there was no reasonable prospect of payment. Exercising its chattel security rights, Brunswick made numerous reposses-

3. Since 1963, there have been very few sales of new bowling equipment due to the availability of large quantities of used equipment (1574a-1575a, 2666a).

sions, and attempted to dispose of the repossessed equipment at discount prices. Such sales, however, did not keep pace with repossessions. Brunswick's efforts to lease repossessed lanes to new independent proprietors proved unsuccessful. Over the years Brunswick had borrowed close to $300 million in order to finance the manufacture and sale of bowling equipment. By late 1964 its receivables were in excess of $400 million of which more than $100 million dollars were over 90 days delinquent. Brunswick was clearly in serious financial difficulty.

"In an effort to reverse its deteriorating condition, Brunswick's management decided on a plan. In those cases in which attempts to collect receivables failed, it would repossess the equipment and attempt to sell it in place to third parties. If no sale could be effected Brunswick would then consider operating the failing centers itself if there appeared to be any reasonable prospect that a positive cash flow would result.

"In January 1965 Brunswick formed a Bowling Center Operations Division (BCOD) charged with the responsibility of evaluating centers and operating those which could produce a positive cash flow. This development was disclosed by Brunswick's president to a meeting of the Bowling Proprietors Association, a retail level trade group, in 1965.

"Between 1965 and 1972 BCOD evaluated over 600 defaulting centers for possible operation, commenced operating 222 of these, disposed of 11 to third parties, and closed 43 which proved unable to develop a positive cash flow. The highest number operated by Brunswick at any one time was 169. The largest

number of centers taken over by Brunswick for operation in any year was 124 in 1965. Of these, centers in three areas are the subject of this appeal. They are Dutchess Lanes in Poughkeepsie, New York, Belmont Lanes in Pueblo, Colorado, and Fair Lawn Lanes, Interstate Lanes, Ten-Pin-on-the-Mall and Lodi Lanes in or near Paramus, New Jersey.

"In each of the local retail market areas a Treadway subsidiary operated a bowling center competing for retail customers with the bowling centers taken over by Brunswick. . . ."

In 1965, petitioner repossessed the pinsetters and lanes at a defaulting bowling center (Dutchess Lanes) in Poughkeepsie, New York, and began operating that center. Under petitioner's operation, Dutchess Lanes failed to develop a positive cash flow and petitioner discontinued that operation in 1969, removing its bowling equipment. At the time petitioner commenced operating Dutchess Lanes in 1965, there were five other bowling centers in the Poughkeepsie area including one operated by respondent, Holiday Bowl-O-Mat, Inc. Each of the five centers continued to operate throughout the period of petitioner's operation of Dutchess Lanes and were still operating at the time of trial (296a-301a, 316a-317a, 597a, 666a-667a, 672a-673a, 1646a, 1723a-1724a).

Petitioner also repossessed the bowling equipment at a defaulting bowling center in Pueblo, Colorado (Belmont Lanes) and began operating that center in 1965. There were four centers in Pueblo, Colorado operated by others at the time, including one operated by respondent Pueblo Bowl-O-Mat, Inc. Each of these centers continued to

operate throughout the period involved in this case (203a, 264a, 692a, 772a-774a, 1646a).

Also in 1965, petitioner was confronted by defaults in equipment payments by the bankrupt American International Bowling Corporation ("AIBC") and its subsidiaries (each of which operated a local bowling center). AIBC and its subsidiaries owed in excess of $10 million to petitioner and petitioner purchased the capital stock of a number of AIBC subsidiaries at the AIBC bankruptcy sale. Included among the AIBC subsidiaries whose stock was purchased by petitioner were two companies operating bowling centers in the general vicinity of Paramus, New Jersey—Fair Lawn Lanes in Fair Lawn, New Jersey and Interstate Lanes in Ramsey, New Jersey. Petitioner began operating these two bowling centers in March 1965 (389a-392a, 1988a, 2048a).

Later, petitioner operated two other bowling centers in that general area. In September 1969, petitioner repossessed the bowling equipment at Ten-Pin-on-the-Mall in Paramus, New Jersey and took over the operations of that bowling center. Beginning in 1970, petitioner operated Lodi Lanes in Lodi, New Jersey under a lease arrangement which expired in 1973 (1728a-1729a).

Respondent Bowl-O-Mat Paramus Operations is the operator of a bowling center in Paramus, New Jersey which was said to be in competition with all four of these centers—Fair Lawn, Interstate, Ten-Pin and Lodi—as well as with a number of other bowling centers in the northern New Jersey area (329a-335a, 2438a).

Claiming that petitioner's taking over and continuing the operation of bowling centers violated Section 2 of the Sherman Act ("monopolization" and "attempt to monopolize") and Section 7 of the Clayton Act ("acquisitions" whose effect "may be substantially to lessen competition, or to tend to create a monopoly"), respondents (and their parent and sister corporations) brought suit against petitioner seeking money damages (under Section 4 of the Clayton Act) and equitable relief (under Section 16 of the Clayton Act).[4] A lengthy jury trial ensued in the United States District Court for the District of New Jersey.

There was no evidence whatever at the trial that competition among bowling centers in the Poughkeepsie, Pueblo and Paramus areas was lessened in any degree (let alone "substantially") by reason of petitioner's taking over or operating any bowling center, nor was there any showing that any of the centers achieved a greater share of the bowling patronage in its market after petitioner began operating it than the center had under its prior operator. As the Court of Appeals pointed out, petitioner's "entry into the picture did not increase concentration, but only acted as a substitution of competitors" (App. *infra*, p. 22a). Throughout the trial respondents took the position that petitioner had violated the law in taking over the centers and keeping them in business, that each of the respondents (as a competitor of one of the centers) was "injured" by the mere continued presence in the market of the center operated by petitioner, and that, therefore, respondents were entitled to recover as "damages" the difference between what their bowling centers actually earned and what

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4. The lawsuit filed by respondents is in contrast with the decision of the Government. Shortly after petitioner's entry into the business of operating bowling centers, the Federal Trade Commission commenced an investigation into petitioner's alleged antitrust violations in this field. The Commission concluded the investigation in 1968, sending petitioner two "no action" letters (43b-52b).

those centers would have earned had the "acquired"[5] centers failed and disappeared from the market (551a-552a, 566a, 580a-583a, 595a-610a, 673a, 785a, 889a-890a, 899a-900a).

At the conclusion of the trial, the jury returned verdicts (2384a-2385a) finding **for**[6] petitioner on the claims of monopolization and attempted monopolization under Section 2 of the Sherman Act, and **against** petitioner on the claims under Section 7 of the Clayton Act. The jury awarded damages to respondents in amounts equal to the additional revenues and profits that respondents' witnesses estimated respondents' bowling centers would have earned over the years if the "acquired" centers had gone out of

5. It is not at all clear that petitioner had "acquired" any of these centers within the meaning of Section 7 of the Clayton Act. Petitioner entered two of the three markets involved in this case (Poughkeepsie and Pueblo) not by purchasing the stock or assets of an existing business enterprise but by exercising its rights as a secured creditor—repossessing, after continuous defaults, assets in which it had an existing security interest. There is nothing in the legislative history of Section 7 of the Clayton Act which suggests that the section was intended to cover a secured creditor's exercise of its right to recover equipment upon default in equipment payments by the debtor.

Petitioner entered the third market (Paramus) by purchasing at a bankruptcy sale the capital stock of two bowling centers which also had defaulted in equipment payments. The legislative history of the 1950 amendments to Section 7 of the Clayton Act demonstrates that Section 7 does not apply to purchases made at bankruptcy sales. See H. R. Rep. No. 1191, 81st Cong., 1st Sess. at p. 6 (1949):

> "The argument that a corporation in bankruptcy or failing condition might not be allowed to sell to a competitor has already been disposed of by the courts. It is well settled that the Clayton Act does not apply in bankruptcy or receivership cases."

See also S. Rep. No. 1775, 81st Cong., 2d Sess. at p. 7 (1950) to the same effect.

6. Wherever boldface is used in this petition, the emphasis is ours.

existence on the day petitioner commenced operating them (2549a).

After its motion for judgments notwithstanding the verdict and, in the alternative, for a new trial was denied (73a-86a; App. *infra*, pp. 33a-49a), petitioner appealed to the United States Court of Appeals for the Third Circuit. In an opinion with far-ranging implications, the Court of Appeals ordered a new trial (holding that the case had been submitted to the jury on erroneous instructions as to both liability and damages) but refused to order the entry of judgment for petitioner as a matter of law (App. *infra*, pp. 1a-32a).

The Court of Appeals held that a properly-instructed jury could find that petitioner had violated Section 7, notwithstanding the fact (established by the jury's Section 2 verdict) that petitioner had neither monopolized nor attempted to monopolize the business of operating bowling centers (either nationally or in the three local markets) and notwithstanding the absence of any showing that there had been a lessening of competition. According to the Court of Appeals: "This case involves a 'deep pocket' manufacturer's decision to integrate vertically forward into local retail markets and to compete with smaller competitors having shallower pockets" (App. *infra*, p. 9a), "in some industries the acquisition of a competitor by a deep pocket parent can have sufficient potential to harm horizontal competitors so as to violate § 7" (App. *infra*, p. 14a), and "there was sufficient evidence of such potential here to submit the case to the jury on the issue of effect on competitors" (App. *infra*, p. 14a).[7]

7. In making these generalizations, the Court of Appeals lost sight of two very salient facts. In the first place, this was not a situation where a large company took a substantial amount of new money and invested it in a planned expansion; petitioner was forced into the business of operating bowling centers in order to

The Court of Appeals also held that respondents could get their damage claim to the jury even though they had not shown any lessening of competition or monopoly, the two evils that Section 7 of the Clayton Act was designed to prevent. According to the Court of Appeals, "a horizontal competitor of a company acquired by a deep pocket parent in violation of § 7 can recover damages under § 4 if it shows injury in fact causally related to the violator's presence in the market, **whether or not that injury flows from or results in an actual lessening of competition"** (App. *infra*, p. 19a).

Additionally, the Court of Appeals held that respondents had adduced sufficient evidence of "damages" to get their case to the jury even though their entire damage theory was based on a premise inconsistent with a finding that Section 7 of the Clayton Act had been violated, to wit the supposition that, had it not been for petitioner's "acquisitions," the bowling centers involved in this case would have failed and gone out of business (App. *infra*, pp. 26a-27a).

Finally, the Court of Appeals held that, although Section 7 comes into play only when a corporation "engaged in commerce" acquires stock or assets from another corporation "engaged also in commerce," and although it

7. (Cont'd.)

salvage something from its defaulted equipment receivables and to protect its remaining receivables which were not in default. As the Court of Appeals noted earlier in its opinion, petitioner only operated centers where "no sale could be effected" to third parties and where there was a "reasonable prospect that a positive cash flow would result" (App. *infra*, p. 8a), *i.e.*, that cash would flow **from the center to petitioner,** not the other way around.

Secondly, as the Court of Appeals had also noted earlier in its opinion, petitioner "was clearly in serious financial difficulty" (App. *infra*, p. 8a). Thus, while petitioner's pockets may have been "deep," they were nearly empty. Petitioner was itself in danger of bankruptcy (2112a-2114a).

would appear that respondents had failed to adduce sufficient evidence concerning the business of the predecessor operators of the "acquired" centers to meet this jurisdictional threshold, the Court would not order dismissal of the case but would, instead, require relitigation of the "in commerce" question "with the plaintiffs being given an opportunity to satisfy the new and more stringent jurisdictional test" set forth in this Court's recent decision in **United States v. American Building Maintenance Industries,** 422 U. S. 271 (1975) (App. *infra*, p. 16a).

REASONS FOR GRANTING THE WRIT.

I.

The Holding of the Court of Appeals for the Third Circuit that a Retail Establishment Can Recover for "Injuries" Attributable to the Mere Continued Presence in the Market of a Competing Retail Establishment Allegedly Acquired in Violation of Section 7 of the Clayton Act Without Proof of Any Lessening of Competition or Monopoly, Presents a Far Reaching Question of Fundamental Antitrust Policy Which Should Be Resolved by This Court.

As the Court of Appeals made clear, this case presents for decision important questions of fundamental antitrust policy which have not heretofore been decided by this Court, foremost among which is a novel and radical theory as to when Section 7 of the Clayton Act may furnish a basis for a claim for money damages under Section 4 of that Act.

As the Court of Appeals put it, "the antitrust questions arise because of the unique interaction among the Clayton Act § 7 . . . and the private remedy provisions of § 4 and § 16 of the same act" (App. *infra,* p. 6a).

Section 4, 15 U. S. C. § 15, provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Section 4 typically is applied in private actions brought to recover damages for alleged violations of Sec-

tions 1 and 2 of the Sherman Act. Since Section 1 of the Sherman Act, 15 U. S. C. § 1, prohibits "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce", one who has been injured in his business or property by reason of such a restraint has a claim for damages under Section 4 of the Clayton Act. Similarly, since Section 2 of the Sherman Act, 15 U. S. C. § 2, makes it unlawful for anyone to "monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize any part of the trade or commerce," Section 4 of the Clayton Act permits one who has been injured by a monopolization or attempted monopolization to sue for the damages he has sustained.

Section 7 of the Clayton Act, 15 U. S. C. § 18, stands on a different footing. As the Court of Appeals recognized, Section 7 is "a statutory prohibition aimed neither at existing conspiracies nor restraints, nor at existing or attempted monopolizations, but at incipient tendencies" (App. *infra,* p. 6a). Section 7 provides in pertinent part:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or . . . assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

This Court has pointed out on a number of occasions that the purpose of Section 7 is preventative in nature. Section 7 "was intended to arrest the anticompetitive effects of market power in their incipiency"; [8] "to arrest apprehended consequences of intercorporate relationships

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8. **FTC v. Procter & Gamble Co.,** 386 U. S. 568, 577 (1967).

before those relationships could work their evil." [9] Courts were given power "to arrest restraints of trade in their incipiency and before they develop into full-fledged restraints violative of the Sherman Act." [10] Congress' "concern was with probabilities, not certainties. Statutes existed for dealing with clear-cut menaces to competition." [11] The design of Section 7 was to stop the harm before it occurred. "Mergers with a probable anticompetitive effect were to be proscribed by this Act." [12] "The test of a violation of § 7 is whether, at the time of suit, there is a reasonable probability that the acquisition is likely to result in the condemned restraints." [13]

Because Section 7 proscribes acquisitions which "may" lead to specified anticompetitive consequences while Section 4 permits recovery by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," there is a fundamental incongruity in basing a Section 4 action on a Section 7 violation. While "a reasonable probability" may or may not ripen into a future actuality, how can it cause injury before it ripens? How can one "be injured in his business or property by reason of" a restraint of trade that is only threatened or potential? Unable to find a satisfactory answer to these questions, a number of federal district courts held in the 1960's that a private plaintiff could not predicate a Section 4 claim for money damages on a violation of Section 7. See **Gottesman v. General**

9. **United States v. E. I. duPont deNemours & Co.**, 353 U. S. 586, 597 (1957).

10. **Brown Shoe Co. v. United States**, 370 U. S. 294, 323 n. 39 (1962) (quoting from the legislative history).

11. *Id.* at 323.

12. *Ibid.*

13. **United States v. E. I. duPont deNemours & Co.**, 353 U. S. at 607.

Motors Corporation, 221 F. Supp. 488, 493 (S. D. N. Y. 1963); **Highland Supply Corp. v. Reynolds Metals Co.**, 245 F. Supp. 510, 512-514 (E. D. Mo. 1965); **Bailey's Bakery, Ltd. v. Continental Baking Co.**, 235 F. Supp. 705, 716-717 (D. Hawaii 1964), *aff'd per curiam* 401 F. 2d 182 (9th Cir. 1968), *cert. denied* 393 U. S. 1086 (1969); **Isidor Weinstein Investment Co. v. Hearst Corp.**, 303 F. Supp. 646, 650 (N. D. Cal. 1969).

In **Gottesman v. General Motors Corporation**, 414 F. 2d 956, 961 (2d Cir. 1969), the Court of Appeals for the Second Circuit took a different approach. In that case, a General Motors stockholder brought a derivative action against duPont as an aftermath of the Government case in which this Court had held that duPont's acquisition of a substantial stock ownership in General Motors constituted a "potential" restraint of trade. **United States v. E. I. duPont deNemours & Co.**, 353 U. S. 586 (1957). The stockholder claimed that, because of the stock ownership, duPont had caused General Motors to purchase paints and fabrics from duPont at higher prices than could have been obtained from other sources. In a pretrial ruling, the district court dismissed the claim holding that there could be no private damage recovery for a Section 7 violation (221 F. Supp. 488) but the court of appeals reversed and remanded, saying (414 F. 2d at 961):

> ". . . The basis of the pretrial ruling was that a section 7 violation can cause no damage because it establishes only that harm was threatened, not that it occurred. But if the threat ripens into reality we do not see why there can never be a private cause of action for damages. If section 7 is designed to prevent acquisitions that 'may' or 'tend to' cause specified harm, such an acquisition may either itself directly bring about the harm or make possible acts that do.

> We do not say that a section 7 violation must, or even probably will, have that result; but that it may and that plaintiffs should have a chance to prove injury 'by reason of' the violation are persuasive propositions. . . ." [14]

The availability of damages "if the threat ripens into reality" obviously means if the threatened injury to competition becomes actual, and not merely potential or incipient.

Subsequent to the **Gottesman** decision, a number of district courts reached the same conclusion.[15] So have the courts of appeals for the Fifth and Eighth Circuits. **Dailey v. Quality School Plan, Inc.**, 380 F. 2d 484, 488 (5th Cir. 1967);[16] **Carlson Companies, Inc. v. Sperry and Hutchinson Co.**, 507 F. 2d 959 (8th Cir. 1974).[17]

14. On remand in **Gottesman**, the district court held that the plaintiff failed to sustain her burden of proving damages resulting from the Section 7 violation, and the court of appeals affirmed. **Gottesman v. General Motors Corporation**, 310 F. Supp. 1257 (S. D. N. Y. 1970), *aff'd* 463 F. 2d 1205 (2d Cir.), *cert. denied* 403 U. S. 911 (1971).

15. **Metropolitan Liquor Co. v. Heublein, Inc.**, 305 F. Supp. 946 (E. D. Wis. 1969); **Western Geophysical Co. v. Bolt Assoc., Inc.**, 305 F. Supp. 1251 (D. Conn. 1969); **Kirihara v. Bendix Corp.**, 306 F. Supp. 72 (D. Hawaii 1969); **Isidor Weinstein Investment Co. v. Hearst Corp.**, 310 F. Supp. 390 (N. D. Cal. 1970); **Metric Hosiery Co. v. Spartans Industries, Inc.**, 50 F. R. D. 50 (S. D. N. Y. 1970); **Champion Spark Plug Co. v. Ransburg Electro-Coating Corp.**, 1971 Trade Cases ¶ 73,553 (N. D. Ohio 1971); **Calnetics Corp. v. Volkswagen of America, Inc.**, 348 F. Supp. 606 (C. D. Cal. 1972); **Peltier v. Humble Oil & Refining Co.**, 1973 Trade Cases ¶ 74,278 (D. Ore. 1972); **Zenith Vinyl Fabrics Corp. v. Ford Motor Co.**, 375 F. Supp. 133 (E. D. Mich. 1973); **Heatransfer Corp. v. Volkswagenwerk A. G.**, 1975 Trade Cases ¶ 60,307 (S. D. Texas 1974).

16. On remand in the **Dailey** case, a jury found for the defendant and the court of appeals affirmed. **Dailey v. Quality School Plan, Inc.**, 427 F. 2d 1080 (5th Cir. 1970).

17. See also **Martin-Trigona v. Federal Reserve Board**, 509 F. 2d 363, 366 n. 12 (D. C. Cir. 1975) (dictum).

In the instant case, however, the Court of Appeals for the Third Circuit went far beyond the **Gottesman** rule and, in effect, rejected the cornerstone of the **Gottesman** reasoning by holding that the mere continued presence in the market of a company allegedly "acquired" in violation of Section 7 may provide a basis for a competitor to recover damages under Section 4 in spite of the absence of proof that the anticompetitive effects supposedly threatened by the "acquisition" had ripened into reality.

While the Court of Appeals for the Second Circuit held in **Gottesman** that recovery may be had in appropriate circumstances for a violation of Section 7, it specifically pointed out that private plaintiffs "cannot rest on a showing of a violation of section 7; they must, as in private actions under other sections of the antitrust laws, prove that they have been injured by the violation." 414 F. 2d at 961. In **Dailey**, the Court of Appeals for the Fifth Circuit emphasized that "it is incumbent upon a plaintiff to allege and prove that he has been 'injured in his business or property' by acts of the defendant which are forbidden by the antitrust laws." 380 F. 2d at 487. And in **Carlson** the Court of Appeals for the Eighth Circuit stressed that "to support a private action a plaintiff must show more than the possibility of harm; he must demonstrate some private harm to himself." 507 F. 2d at 961. "Recovery for a violation as alleged in plaintiff's complaint must rest on proof of actual damage." *Id.* at 962. And "it is only anti-competitive injury which § 7 was intended to eliminate." *Ibid.*

Since, even under **Gottesman, Dailey** and **Carlson**, one cannot sustain damages from a mere probability and since Section 4 of the Clayton Act permits recovery only for damages sustained "by reason of anything forbidden in the antitrust laws," it would seem to be axiomatic that if a private action for damages for violation of Section 7 is to

be allowed, the "injury" that must be shown is injury flowing from that which Section 7 was designed to protect against, *i.e.*, an actual lessening of competition or a monopoly. Numerous Section 7 cases have recognized this principle. See, for example:

> **Peterson v. Borden Co.**, 50 F. 2d 644, 646 (7th Cir. 1931) ("the right of action given to persons injured through the resultant tendency to substantial lessening of competition or creation of monopoly would include such injury only as such tendency to lessen competition or to create monopoly engendered").
>
> **GAF Corp. v. Circle Floor Co., Inc.**, 463 F. 2d 752, 759 (2d Cir. 1972), *cert. dismissed* 413 U. S. 901 (1973) ("only a person whose competitive business position was harmed by the *anticompetitive* effects of the alleged restraint of trade can maintain a treble damage action").
>
> **Reibert v. Atlantic Richfield Co.**, 471 F. 2d 727, 731 (10th Cir.), *cert. denied* 411 U. S. 938 (1973) ("The first element [of proximate cause], causal connection between violation and injury, is lacking because appellant cannot show that any antitrust violations directly injured him. He has suffered no direct injury as a result of the prohibited lessening of competition").
>
> **Rayco Mfg. Co. v. Dunn**, 234 F. Supp. 593, 597 (N. D. Ill. 1964) ("the injury must result from the lessened competition or monopoly itself").
>
> **Pandola v. Texaco, Inc.**, 1975 Trade Cases ¶ 60,232 at p. 65,931 (C. D. Cal. 1975) ("a private litigant must demonstrate not only that its injury is causally related to the challenged acquisition, but also that its claimed injury results directly from the specific anticompetitive consequences proscribed by Section 7 itself, *i.e.*, 'lessened competition or monopoly itself'").

Perhaps the best statement of the principle is contained in **Dole Valve Co. v. Perfection Bar Equipment, Inc.**, 311 F. Supp. 459, 462 (N. D. Ill. 1970), where the court said:

> "To recover damages under Section 7 of the Clayton Act, a complainant must be able to show that he 'suffered some special damage to his business as a direct and proximate result of the acquisition. • • • the injury must result from the lessened competition or monopoly itself.' . . . Proof that a competitor made sales after it was unlawfully acquired by another, even if the complainant competed for those sales, is not evidence that the sales were the 'direct and proximate result' of the unlawful acquisition. If such were the rule, corporations violating Section 7 would become insurers of the commercial success of their competitors. This is not the law."

In a most extreme extension of the concept that a Section 7 violation may give rise to a claim for money damages under Section 4, the Court of Appeals for the Third Circuit has held in the instant case that a competitor of the "acquired" company need **not** show injury resulting from a lessening of competition or monopoly. Rather, according to the Third Circuit, the competitor may recover damages under Section 4 merely by showing "injury in fact causally related to the violator's presence in the market, **whether or not** that injury flows from or results in an actual lessening of competition" (App. *infra*, p. 19a). The court permits

this to occur on the unprecedented theory that "illegal presence which causes injury to the business or property of a competitor is compensable under § 4." (*Ibid.*).

As indicated, no case has ever gone this far. To the contrary, the principles espoused by the Third Circuit are a complete emasculation of the views of the Second Circuit in **Gottesman** and **GAF**, the Fifth Circuit in **Dailey**, the Seventh Circuit in **Petersen**, the Eighth Circuit in **Carlson**, the Tenth Circuit in **Reibert**, and the various district courts which have dealt with the question. The cases indicating that damage recovery may be had in appropriate circumstances for a Section 7 violation proceed on the premise that the harm for which there may be such recovery must be harm that flows from the lessened competition or monopoly that Section 7 was designed to prevent.[18]

The Third Circuit has itself recognized that its "interpretation of the interaction between § 7 and § 4 obviously has far-reaching ramifications" (App. *infra*, p. 19a). The reach may be even greater than the court imagines. For since "this is perhaps the first case in which an award of money damages has been made to a private plaintiff for an alleged violation of § 7" (App. *infra*, pp. 6a-7a), the court's ruling may—indeed, almost inevitably will—serve as the lodestar for rulings in other Section 7 damage cases throughout the country. Since Section 7 requires proof only that there is a reasonable probability that "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly," it is not at all

18. In addition to the cases cited in the text, see also **Zenith Vinyl Fabrics Corp. v. Ford Motor Co.**, 357 F. Supp. 133, 137 (E. D. Mich. 1973); **Peltier v. Humble Oil & Refining Co.**, 1973 Trade Cases ¶ 74,278 (D. Ore. 1972); **Calnetics Corp. v. Volkswagen of America, Inc.**, 348 F. Supp. 606, 620 (C. D. Cal. 1972); **Kirihara v. Bendix Corp.**, 306 F. Supp. 72, 90-91 (D. Hawaii 1969); and **Smith-Victor Corp. v. Sylvania Electric Products Inc.**, 242 F. Supp. 315, 320 (N. D. Ill. 1965).

unreasonable to anticipate that the ruling in the instant case will open the floodgates for treble damage suits and windfall verdicts every time an "acquisition" occurs, even though the acquisition has no actual anticompetitive consequences. We respectfully urge that this is a misuse of Sections 4 and 7 which should be arrested in its incipiency by this Court.

II.

The Holding by the Court of Appeals for the Third Circuit that a Competitor of an "Acquired" Business Can Get to the Jury on a Damage Claim Based on the Premise that the "Acquired" Business Would Have Failed and Disappeared From the Market in the Absence of the "Acquisition," States a Novel Legal Proposition Which Is Contrary to the "Failing Company" Doctrine and the Fundamental Principle that a Party Should Not Be Permitted to Maintain Mutually Contradictory Positions in the Same Lawsuit.

Section 7 of the Clayton Act was never intended to "impede . . . a merger between a corporation which is financially healthy and a failing one which no longer can be a vital competitive factor in the market." **Brown Shoe Co. v. United States**, 370 U. S. 294, 319 (1962). If an acquired company did not have the resources to be an effective competitor in the market, Section 7 is not violated by its acquisition. **United States v. General Dynamics Corp.**, 415 U. S. 486, 506-510 (1974).

Ever since **International Shoe Co. v. FTC**, 280 U. S. 291 (1930), it has been firmly established that an acquisition is immune from challenge under Section 7 where it is shown that the financial condition and resources of the acquired company were so dire that it faced the grave

possibility of business failure and there were no prospective purchasers other than the acquiring company. **See United States v. Diebold, Inc.,** 369 U. S. 654 (1962); **Citizen Publishing Co. v. United States,** 394 U. S. 131 (1969); **United States v. Greater Buffalo Press, Inc.,** 402 U. S. 549 (1971). In adopting this "failing company" doctrine, Congress [19] and the courts considered it more important to preserve the existence of a competitive entity than to eliminate the potential anticompetitive effects of the acquisition.

In dealing with the "failing company" doctrine as a defense, this Court has stated that "the burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it." **Citizen Publishing Co. v. United States,** 394 U. S. at 138-139. But, surely, this rule as to the burden of proof should not be transformed into a weapon which enables a private plaintiff to recover on a damage claim which is premised in its entirety on the theory that, were it not for the "acquisition," the "acquired" company would have failed and gone out of business, nor should it be allowed to produce the wholly untenable result which would follow. Yet that is exactly what the Third Circuit has permitted to happen here.

Respondents' entire case was based on the premise that, had it not been for petitioner's "acquisitions," the "acquired" bowling centers would have gone out of business.[20] The "damages" which respondents proved consisted solely of the difference between what respondents'

19. Both Houses of Congress expressed an intention to preserve the failing company doctrine when Section 7 of the Clayton Act was amended in 1950. See **Brown Shoe,** 370 U. S. at 331.

20. As one of respondents' witnesses graphically put it "the assumption is that these centers would have fallen of their own economic weight if Brunswick didn't prop them up" (1297a-1298a).

bowling centers actually earned and what it was estimated these centers would have earned had the "acquired" centers gone out of business. The Court of Appeals specifically recognized this:

> ". . . It is . . . argued that Brunswick's presence in these markets was illegal and that plaintiffs suffered damages . . . because in the absence of that illegal presence the acquired centers would have gone out of business thus effectively transferring customers to Treadway's centers" (App. *infra,* pp. 9a-10a).
>
> "To meet this burden [of proving damages] the only evidence offered by plaintiffs was the expert opinions of several witnesses as to what profits the Treadway bowling centers would have made if Brunswick, instead of acquiring the centers, had permitted them to close" (App. *infra,* p. 24a).
>
> ". . . If the suit had been commenced at a time when the Court might have prevented the acquisitions by Brunswick or any other deep pocket owner, and if it had done so, one of two things might have happened. Brunswick might have allowed the bowling centers to close, and would thereby have eliminated any § 4 injury to plaintiff's property or business. Alternatively Brunswick might have found another purchaser whose presence in the market would have retained the same level of competition. The injury to Treadway's property or business at least on this record would have been the same, but there would have been no § 7 violation on which to predicate either a § 4 or a § 16 action. . ." (App. *infra,* p. 30a).

Thus, it was a necessary prerequisite to respondents' damage theory that the finder of fact first conclude that

the bowling centers in question would have failed and gone out of business had petitioner not "acquired" them. Indeed, in their own petition for certiorari, respondents insist that the record in this case establishes, beyond any possible cavil, that the "acquired" centers would, in fact, have gone out of business.[21] Respondents have made this assertion in order to nail down the factual premise for their "damage" claim, but in so doing respondents effectively have conceded everything which is necessary to entitle petitioner to judgment under the "failing company" doctrine. If the "acquired" bowling centers would have failed and gone out of business but for the "acquisitions", they were "failing companies" whose "acquisition" could not have violated Section 7. Contrariwise, if the "acquired" centers would not have gone out of business, respondents have shown no "damages" attributable to petitioner's alleged violations of Section 7. Either way, respondents' case must fail.

The Third Circuit held, however, that petitioner was not entitled to judgment of dismissal as a matter of law. According to that court, since the burden of establishing the failing company defense is on the defendant, a jury presumably could find that petitioner failed to carry its affirmative burden and, at the same time, could find that respondents had carried their burden of showing that the "acquired" centers would have gone out of business were it not for the "acquisitions" (App. *infra*, pp. 26a-27a). This makes no sense at all. The "acquired" centers either would have gone out of business (in which case there would be no Section 7 violation) or they would not have gone out of business (in which case no damages were shown). Respondents cannot have it both ways.

21. Petition for certiorari in **Treadway Companies, Inc. et al. v. Brunswick Corporation,** (October Term 1975, No. 75-770) pp. 13-14.

The paradox appears to stem from the Third Circuit's unreasoning obedience to this Court's pronouncement in the **Citizen Publishing Co.** case, *supra,* that "the burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it." This Court should make it clear that the principle of the **Citizen Publishing Co.** case should not be used to defeat the fundamental principles (1) that the party who has the burden of proof on an issue is relieved of that burden where his adversary supplies the necessary proof,[22] and (2) that a litigant should not be permitted to maintain mutually contradictory positions in the same lawsuit.[23] To hold otherwise and to permit respondents to blow hot and cold on the same question of fact is offensive to basic concepts of fairness and forthrightness and, as here, makes

22. *See, e.g.,* **Bradford Audio Corp. v. Pious,** 392 F. 2d 67, 73 (2d Cir. 1968) ("The appellee may avail himself of the appellant's proof"); **Aetna Insurance Co. v. Taylor,** 86 F. 2d 225, 227 (5th Cir. 1936) ("The burden of proof is satisfied by actual proof of the facts of which proof is necessary, regardless of which party introduces the evidence"); **Van Sant v. American Express Co.,** 169 F. 2d 355, 365 (3d Cir. 1948). ("[A] party may be relieved of the burden imposed upon him by the fact that the necessary proof is introduced by his adversary"). See also **Carr v. National Discount Corp.,** 172 F. 2d 899, 903 (6th Cir. 1949).

23. See, *e.g.,* **Scarano v. Central R. Co.,** 203 F. 2d 510, 512-513 (3d Cir. 1973) (It "is sometimes said to be a general rule that 'a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or a successive series of suits' "); **Diaz v. Southeastern Drilling Co.,** 324 F. Supp. 1, 7 (N. D. Tex. 1969) ("No rule is better settled than the one that: 'A party who assumes and successfully maintains a certain position in a judicial proceeding cannot thereafter adopt an inconsistent position if doing so would result in prejudice to his adversary"). See also **Davis v. Wakelee,** 156 U. S. 680, 689 (1895); **Jamison v. Garrett,** 205 F. 2d 15, 17 (D. C. Cir. 1953); **Lummus Co. v. Commonwealth Oil Refining Co.,** 280 F. 2d 915, 928 (1st Cir. 1960); **Roth v. McAllister Bros., Inc.,** 316 F. 2d 143, 145 (2d Cir. 1963). And see **Holcomb v. Aetna Life Insurance Co.,** 255 F. 2d 577 (10th Cir. 1958); **Jones v. Central of Georgia Ry. Co.,** 331 F. 2d 649 (5th Cir. 1964).

a mockery of the principles underlying the "failing company" doctrine.[24] The Court of Appeals should have ordered the entry of a judgment of dismissal as a matter of law.

III.

The Refusal by the Court of Appeals for the Third Circuit to Decide the "Commerce" Question in Petitioner's Favor and the Decision to Give Respondents a Second Chance to Prove This Essential Element of Their Case, Represents an Improper Approach for a Reviewing Court at Variance With the Approach Taken by This Court and Another Court of Appeals, and Reflects a Misconception of the Two-Fold "Commerce" Requirements of Section 7 of the Clayton Act.

As the Act makes clear and as the Court of Appeals expressly noted (App. *infra*, p. 15a), Section 7 of the Clayton Act applies only when a corporation "engaged in commerce" acquires the stock or assets of "another corporation engaged also in commerce." Affirming the grant of summary judgment to a defendant in a Government Section 7 case, this Court has recently held that "the phrase 'engaged in commerce' as used in § 7 of the Clayton Act means engaged in the flow of interstate commerce, and was not intended to reach all corporations engaged in activities subject to the federal commerce power." **United States v.**

24. In its opinion, the Court of Appeals recognized that the undisputed evidence demonstrates that it was petitioner's policy to attempt to sell repossessed equipment in place to third parties and that petitioner would only takeover a center if no sale to third parties could be effected (App. *infra*, p. 8a). It is obvious that there were no prospective purchasers for the centers involved in this case and that there was no alternative to operation of these centers by petitioner.

American Building Maintenance Industries, 422 U. S. 271, 283 (1975). "To be engaged 'in commerce' within the meaning of § 7, a corporation must itself be directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce." *Ibid.* And in determining whether the acquired company was so "engaged," one must look to the activities of the acquired company "at the time of the acquisition and merger." *Ibid.*

Although the trial of the instant case lasted over two months, respondents made no showing whatsoever that any of the prior operators of the bowling centers "acquired" by petitioner was "engaged in commerce" as that term was construed in the **American Building Maintenance** case. With the exception of Belmont Lanes in Pueblo, Colorado (whose owner also operated one other bowling center in the same state), each of the six bowling centers "acquired" by petitioner had been operated by a business enterprise whose sole business was the operation of that particular bowling center.[25] There was no showing that any of these local bowling center operators was "directly engaged in the production, distribution or acquisition of goods or services in interstate commerce." Each bowling center merely provided bowling facilities used by patrons of the local community which it served and each center competed for bowling business only within the confines of a particular state. The operation of a bowling center, without more, is clearly a wholly intrastate activity which does not satisfy the interstate commerce requirements of the antitrust laws. **Lieberthal v. North Country Lanes, Inc.**, 332 F. 2d 269, 271 (2d Cir. 1964).

25. The slight factual variation with respect to the prior operator of Belmont Lanes makes no significant difference. The fact that a corporation operates two local businesses in the same state does not make it any more engaged in interstate commerce than if it operates only one such business.

Certainly the mere fact that the prior operators of the "acquired" bowling centers had initially outfitted the centers with equipment obtained from outside the state does not mean that they were "engaged in commerce" when petitioner "acquired" them some years later. Nor would obtaining some incidental supplies from outside the state convert these local intrastate businesses into businesses "engaged in [interstate] commerce". See **Lieberthal,** *supra.*

Respondents simply failed to show that the "acquired" companies were "engaged in commerce." And the Third Circuit seemed specifically to recognize this when it said (App. *infra,* pp. 15a-16a):

> ". . . had the district court granted a motion to dismiss at the close of the plaintiffs' case, on the ground that the new § 7 threshold had not been met, we might have been inclined to affirm that decision."

Yet, rather than order the district court to dismiss the action on the ground that the Section 7 threshold had not been met, the Court of Appeals decided to give respondents a second chance; it remanded the case to the district court for a new trial. This was altogether improper.[26] If

26. In attempting to justify its decision to remand, the Court of Appeals stated that this Court's decision in **American Building Maintenance** had espoused a "new § 7 threshold" (App. *infra,* p. 16a), and that **Transamerica Corp. v. Board of Governors,** 206 F. 2d 163, 166 (3d Cir.), *cert. denied* 346 U. S. 901 (1953), had established "the proposition" in the Third Circuit "that the Clayton Act § 7, like § § 1 and 2 of the Sherman Act, represented an exercise of Congress' full powers under the commerce clause" (App. *infra,* p. 15a).

We submit that the Court of Appeals was wrong on both counts. It is clear from this Court's opinion in **American Building Maintenance** that the Court did not think that it was formulating any new principle of law but was simply following **Federal Trade Commission v. Bunte Bros.,** 312 U. S. 349 (1941), and the consistent enforcement policy of the Federal Trade Commission and the Department of Justice, the two governmental agencies charged with enforcing Section 7. See 422 U. S. at 275-283.

The Court of Appeals for the Third Circuit had **not** held in **Transamerica** that the "in commerce" language of Section 7 represented an exercise of Congress' full powers under the commerce clause. Indeed, the question was not even before the court in that case; there it was found as a fact that the companies in question were engaged in interstate commerce. 206 F. 2d at 165. The issue the court was addressing in **Transamerica,** when it spoke of the reach of Section 7, was whether Section 7 applies to commercial banks. *Id.* at 166.

a plaintiff fails to put into evidence all the proof necessary to sustain a judgment in his favor, the case should be dismissed. The fact that the district court failed to dismiss the case should have no bearing on the matter. Whether the jursidictional "in commerce" threshold has been satisfied by the proof is not the kind of question which the district court is in a better position to determine than is the court of appeals. The question is one of law which can be resolved upon a review of the record. If the evidence is insufficient as a matter of law, the case should be dismissed.

The approach taken by the Court of Appeals for the Third Circuit in the instant case is in direct conflict with the approach of the Court of Appeals for the Eighth Circuit in **Diversified Brokerage Services, Inc. v. Greater Des Moines Board of Realtors,** 521 F. 2d 1343 (8th Cir. 1975). There the Eighth Circuit affirmed the dismissal of a private antitrust action for failure of the plaintiff to show a sufficient interstate nexus, notwithstanding the court's recognition that there was a possibility that, if given another chance, the plaintiff might show such a nexus under principles recently laid down by this Court in a case decided subsequent to the district court decision. The Eighth Circuit said (521 F. 2d at 1347 n. 3):

> ". . . where appellants were given ample opportunity to present evidence on the interstate nexus and

> afforded a full opportunity for discovery, we do not believe it would be appropriate for us to now remand this case to the district court for further proceedings."

See also **Gulf Oil Corp. v. Copp Paving Co.**, 419 U. S. 186 (1974), where this Court held that an antitrust plaintiff's failure to allege and prove an effect on interstate commerce required the entry of judgment for the defendant.

We submit that the approach taken by the Eighth Circuit in **Diversified** and this Court in **Gulf Oil** is the proper one for a reviewing court to follow and that the approach taken by the Third Circuit in the instant case is contrary to the fundamental principles that a case should not be remanded for the purpose of giving a party an opportunity to supply omissions in his evidence, **Glassman Construction Co. v. United States,** 421 F. 2d 212, 214 (4th Cir. 1970), that "every litigant is entitled to one fair trial, not two," *ibid,* and that "an appellate court must apply the law in effect at the time it renders its decision." **Thorpe v. Housing Authority,** 393 U. S. 268, 281 (1969). See also **Bradley v. Richmond School Board,** 416 U. S. 696, 711-716 (1974).

Moreover, in directing that the "engaged in commerce" question be relitigated in the instant case, the Third Circuit proceeded on the premise that, on a retrial, respondents may be able to adduce sufficient evidence of interstate "purchases of pins, pinsetter parts and perhaps other supplies" to show that the bowling centers taken over by petitioner "were engaged 'in the flow of interstate commerce' within the meaning of the new § 7 test" set forth in **United States v. American Building Maintenance Industries,** *supra* (App. *infra,* p. 16a). However, in premising the remand on this proposition, the Third Circuit overlooked the fact that Section 7 of the Clayton Act has not one, but two "commerce" tests. Not only must the

acquiring and acquired corporations be "engaged in commerce" but the anticompetitive effects of the challenged acquisition must be in a "line of commerce".[27] Proof of purchases of equipment and supplies in interstate commerce could not satisfy this second test. Since the Clayton Act defines "commerce" as interstate commerce,[28] a violation of Section 7 must rest upon a showing of **anticompetitive effects on interstate commerce.** Certainly that is what this Court has assumed to be the law. See **Gulf Oil Corp. v. Copp Paving Co.,** 419 U. S. 186 (1974), where this Court said (at pp. 201-202):

> ". . . §§ 3 and 7 of the Clayton Act . . . were intended to complement the Sherman Act and to facilitate achievement of its purposes by reaching, in their incipiency, acts and practices that promise, in their full growth, to impair competition in interstate commerce. . . .
>
> ". . . Even if the Clayton Act were held to extend to acquisitions and sales having substantial effects on commerce, a court cannot presume that such effects exist. **The plaintiff must allege and prove that apparently local acts in fact have adverse consequences on interstate markets and the interstate flow of goods** in order to invoke federal antitrust prohibitions. . . ."

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27. Section 7 provides:

"No corporation engaged in commerce shall acquire . . . the whole or any part of the stock or . . . assets of another corporation engaged also in commerce, where **in any line of commerce** in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

28. Section 1 of the Clayton Act, 15 U. S. C. § 12, says that "'commerce,' as used herein, means trade or commerce among the several states and with foreign nations," *i.e.,* interstate commerce.

As the Court of Appeals for the Ninth Circuit said in **Page v. Work**, 290 F. 2d 323, 333 (9th Cir.), *cert. denied* 368 U. S. 875 (1961):

> ". . . [I]t must be interstate commerce which feels the pinch, or competition in interstate commerce which may be substantially lessened, or where there is a tendency toward the creation of a monopoly in interstate commerce, before the provisions of [Section 7] become applicable.
>
> ". . . [T]he language of Section [7] in no way indicates that Congress intended to apply the provisions of that Act to purely local activities wholly directed to a local intrastate market and relating to a product not in the flow of interstate commerce. . . ."

The Court of Appeals quite properly recognized in the instant case that respondents did not prove or attempt to prove that petitioner's "acquisitions" had any impact upon commerce in the manufacture or sale of bowling equipment and supplies (App. *infra*, p. 10a). Rather, the evidence introduced by respondents was geared to an attempt to demonstrate that petitioner's "acquisitions" of bowling centers in the Poughkeepsie, Pueblo and Paramus markets "created the possibility of substantially lessening horizontal retail competition and tended toward the creation of a retail monopoly" in those three local markets (App. *infra*, p. 11a). But this retail business was a purely local business, not a "line of [interstate] commerce." The business consisted of providing bowling facilities for patrons in a local geographical area.[29] There was no showing

29. In their complaint, respondents had alleged that "the effects of [petitioner's] acquisitions of the above-named bowling centers is and has been substantially to lessen competition or tend to create a monopoly" in three specified retail markets (23a), to wit "the entire metropolitan area of Pueblo, Colorado," "Bergen

that bowlers crossed state lines to come to bowling centers in the Poughkeepsie, Pueblo or Paramus markets or that any bowling centers in these areas solicited customers from across state lines. To the contrary, the evidence demonstrated that the bowling center business in each of these communities was, purely and simply, a local business.

Thus a new trial would be futile since even if it were shown that petitioner's predecessors in the operation of bowling centers "engaged in" interstate commerce when they purchased bowling equipment and supplies, that interstate commerce ceased when the equipment and supplies were delivered to the purchasers and did not extend into the purely local use which they made of the purchased goods. This Court held in **Schechter Corp. v. United States**, 295 U. S. 495, 543 (1935):

> ". . . The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition or use. . . ."

At most, there was a mere "nexus" between interstate commerce in bowling equipment and supplies and local competition in the operation of bowling centers—a nexus no stronger than that which this Court held in **Gulf Oil Corp. v. Copp Paving Co.**, *supra*, was insufficient to bring a local business into the stream of interstate commerce.

Why should petitioner, or indeed the district court, be burdened with an expensive retrial and relitigation of

29. (Cont'd.)

County, New Jersey and an area within a six-mile radius of" Paramus Bowl-O-Mat, and "Wappingers Falls, New York, Poughkeepsie, New York, and communities situated within ten to twenty miles of Wappingers Falls" (13a).

the "engaged in commerce" question when, whatever may be shown in the way of interstate purchases by the bowling centers which petitioner "acquired", respondents will be precluded by the nature of their case from showing that any of the "acquisitions" had an anticompetitive effect on a line of interstate commerce? In the words of this Court in **Gulf Oil Corp. v. Copp Paving Co.**, *supra*, "plaintiff must allege and prove that apparently local acts in fact have adverse consequences on interstate markets and the interstate flow of goods in order to invoke federal antitrust prohibitions." 419 U. S. at 202. It makes no sense to have the judicial system and the parties go through another protracted trial of the instant case when it is obvious that respondents have not made, and cannot make, any such showing. And, even if this were not so, under the authorities cited at p. 34, *supra*, respondents' time for offering such evidence has expired. The Court of Appeals should have ordered the district court to enter judgment for petitioner.

CONCLUSION.

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the U. S. Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 74-2127, 74-2128 and 75-1152

NBO INDUSTRIES TREADWAY COMPANIES, INC., NATIONAL BOWL-O-MAT CORPORATION, PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS, HOLIDAY BOWL-O-MAT, INC., SAGINAW BOWL-O-MAT, INC., PARADISE BOWL-O-MAT, INC., MUNCIE BOWL-O-MAT, INC., SKORE LANES BOWL-O-MAT, INC., MINNEAPOLIS BOWL-O-MAT, INC., DES MOINES BOWL-O-MAT, INC., and INDIANAPOLIS BOWL-O-MAT, INC.,

v.

BRUNSWICK CORPORATION, DANIEL LIEBLICH and REUBEN DANKOFF

BRUNSWICK CORPORATION, Appellant in No. 74-2127
PUEBLO BOWL-O-MAT, INC., HOLIDAY BOWL-O-MAT, INC., and BOWL-O-MAT PARAMUS OPERATIONS, Appellants in No. 74-2128
BRUNSWICK CORPORATION, Appellant in No. 75-1152

(D.C. Civil No. 595-66)

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Submitted on Briefs April 1, 1975
BEFORE STALEY, GIBBONS and WEIS, *Circuit Judges.*

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OPINION OF THE COURT

(Filed August 29, 1975)

GIBBONS, *Circuit Judge.*

I. INTRODUCTION

We have before us appeals and cross-appeals from a final judgment entered in a private antitrust case. The following determinations in the district court are being challenged: (1) the finding of a violation of § 7 of the Clayton Act, 15 U.S.C. § 18; (2) the correctness of the trial judge's calculation of attorney fees and costs; and (3) the

propriety of the trial judge's entry of a divestiture order in a private antitrust case.[1]

The complaint in this complicated litigation was filed on June 14, 1966 by Treadway Companies, Inc. (then known as National Bowl-O-Mat Corp.) and ten wholly-owned subsidiaries[2] through which it operated bowling centers throughout the United States. The plaintiffs charged Brunswick Corporation (Brunswick), a manufacturer and distributor of bowling equipment, with: (1) entering into resale price maintenance contracts in violation of § 1 of the Sherman Act, 15 U.S.C. § 1 (First Claim); (2) monopolizing and attempting to monopolize the business of operating bowling centers in various markets in which Treadway operated competing centers, thus violating § 2 of the Sherman Act, 15 U.S.C. § 2 (Second Claim); and (3) acquiring and operating bowling centers in the Poughkeepsie, New York, Pueblo, Colorado, and Paramus, New Jersey market areas which had the effect of substantially lessening competition or tending to create a monopoly in violation of § 7 of the Clayton Act, 15 U.S.C. § 18 (Third Claim). During a pre-trial conference held on March 6, 1973, the Sherman Act § 1 claim was abandoned. The § 2 Sherman Act claim and the § 7 Clayton Act claim went to trial. The jury returned a verdict in Brunswick's favor on the Sherman Act claim. No appeal has been taken from this determination. However, the jury found in favor of three of the plaintiffs— Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc., and Bowl-O-Mat Paramus Operations—

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1. Many of the issues presented herein were before us in June 1974. We dismissed those appeals because they were taken from orders which were not final. NBO Indus. Treadway Cos. v. Brunswick Corp., 500 F.2d 1400 (3d Cir. 1974) (Nos. 74-1621, 1622); Appeal of Pueblo Bowl-O-Mat, Inc., 500 F.2d 1400 (3d Cir. 1974) (No. 74-1622); Treadway Cos. v. Brunswick Corp., 500 F.2d 1400 (3d Cir. 1974) (No. 73-2010).

2. These subsidiaries were: Pueblo Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations, Holiday Bowl-O-Mat, Inc., Saginaw Bowl-O-Mat, Inc., Paradise Bowl-O-Mat, Inc., Muncie Bowl-O-Mat, Inc., Skore Lanes Bowl-O-Mat, Inc., Minneapolis Bowl-O-Mat, Inc., Des Moines Bowl-O-Mat, Inc., and Indianapolis Bowl-O-Mat, Inc.

on the § 7 Clayton Act claim. Damages were awarded in the following amounts:

(1) Pueblo Bowl-O-Mat, Inc., Pueblo, Colorado	$ 964,830
(2) Holiday Bowl-O-Mat, Inc., Poughkeepsie, New York	$ 298,800
(3) Bowl-O-Mat Paramus Operations, Paramus, New Jersey	$1,094,400

Pursuant to § 4 of the Clayton Act, 15 U.S.C. § 15, the district court trebled each of these awards, and on May 31, 1973 entered judgment on the damage claims for $7,074,090. As a result of Brunswick's post-trial motions, which were in all other respects denied, the district court granted a new trial as to Pueblo Bowl-O-Mat, Inc., unless Pueblo consented to a remittitur of $499,050. *Treadway Cos., Inc. v. Brunswick Corp.*, 364 F. Supp. 316, 326 (D. N.J. 1973) (decision on post-trial motions). Pueblo did consent, and on October 5, 1973 an order was entered reducing Pueblo's treble damage recovery to $2,395,440. Thus the total damage award was $6,575,040. The district court also considered plaintiffs' application for an award of costs and attorney fees. On April 2, 1974 judgment was entered in the district court awarding $428,468 as attorney fees, and $18,509.32 as costs. On September 24, 1974, after the appeals both by plaintiffs and Brunswick from this award were dismissed by this court,[3] the district court entered an order pursuant to Rule 54(b), Fed. R. Civ. P. directing the following: (1) that the May 31, 1973 judgment, and the October 5, 1973 and April 2, 1974 orders, be entered as final; (2) that the entries be made *nunc pro tunc* as of their original dates for the purpose of fixing the time from which interest at the legal rate would accrue; (3) that the entries be made as of September 24, 1974 for the purpose of taking any appeals. The district court re-

3. See note 1 *supra*.

tained jurisdiction over the claim for equitable relief pursuant to § 16 of the Clayton Act, 15 U.S.C. § 26.

Brunswick appeals from the damage award of $6,575,040; from the award of attorney fees and costs; and from the district court's decision awarding interest from the time of the original judgment and order rather than from the time of the Rule 54(b) certification. Brunswick does not dispute the amount of the award of attorney fees and costs assuming the jury verdict is allowed to stand. It contends, however, that if the verdict is set aside the award of fees and costs must also be set aside. Treadway appeals from the calculation of the fee award contending that it was too low.

On November 15, 1974, the district court filed an opinion,[4] and on January 9, 1975 entered a final judgment, pursuant to § 16 of the Clayton Act, enjoining Brunswick from acquiring any existing bowling centers in the Pueblo, Paramus and Poughkeepsie/Wappingers Falls areas and ordering divestiture of centers previously acquired in those areas. Brunswick filed an appeal from this judgment. On February 14, 1975 this court entered an order directing that Brunswick's appeal from the injunction and divestiture judgment (No. 75-1152) be consolidated with Brunswick's other appeal (No. 74-2127) and with plaintiffs' cross-appeal (No. 74-2128).

Brunswick's contentions, listed below in the order in which they shall be considered, present these questions:

(A) *With respect to the jury verdict:*

(1) Does the record establish a prima facie violation of § 7 of the Clayton Act by Brunswick?

(2) Are treble damages pursuant to § 4 of the Clayton Act recoverable by litigants in the plaintiffs' positions solely for a violation of § 7 of the Clayton Act?

4. Treadway Cos. v. Brunswick Corp., 389 F. Supp. 996 (D. N.J. 1974).

(3) Did the court properly instruct the jury as to the elements of a Clayton Act § 7 case?

(4) Was the jury properly instructed on § 4 damages?

(B) *With respect to the injunction and divestiture order:*

(1) Was there evidence in the record sufficient to support the court's finding of a Clayton Act § 7 violation?

(2) Does § 16 of the Clayton Act authorize the entry of a divestiture order, at the insistence of a private litigant, to redress a violation of Clayton Act § 7?

Plaintiffs' main contention on their cross-appeal is that the criteria for fee awards laid down in *Lindy Brothers Builders, Inc. v. American Radiator & Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973) and reiterated in *Merola v. Atlantic Richfield Co.*, 493 F.2d 292 (3d Cir. 1974), while properly applied by the district court, have no place in fully litigated antitrust actions. Rather, it is argued that these criteria should be applied only in class action settlements.

Virtually all of the issues before us are of first impression in this circuit and many are of first impression nationally. The antitrust questions arise because of the unique interaction among the Clayton Act § 7 which proscribes acquisitions having an effect which "*may* . . . substantially . . . lessen competition, or . . . tend to create a monopoly" and the private remedy provisions of § 4 and § 16 of the same act. A statutory prohibition aimed neither at existing conspiracies nor restraints, nor at existing or attempted monopolizations, but at incipient tendencies, presents problems of private enforcement not frequently encountered. Indeed this is perhaps the first case in which an award of money damages has been made to a private

plaintiff for an alleged violation of § 7. Thus the district court was exploring largely virgin antitrust territory. Certain errors were committed in this new territory which warrant a new trial. Reconsideration of the fee award will be required as well.

II. The Industry Background

Brunswick is one of the two largest manufacturers, distributors and financiers of bowling alley equipment in the United States. Its chief competitor is the American Machine and Foundry Company (AMF), a company about equal in size. Prior to 1964 Brunswick supplied the bowling recreation industry with large quantities of equipment such as lanes and automatic pinsetters. Since this equipment required a substantial capital investment Brunswick also financed the equipment on extended secured credit terms. In the early 1960's, however, the bowling recreation industry went into a sharp decline. The plaintiffs attribute this decline to overexpansion in the industry. They blame Brunswick for this overexpansion, claiming that it financed too many centers, and in particular, that it saturated certain areas with facilities so as to make competitive success impossible.

Simultaneously with the decline in the industry there occurred a collection problem. Defaults on equipment loans became commonplace. Numerous bowling center proprietors were in such hopeless financial straits that it became clear that there was no reasonable prospect of payment. Exercising its chattel security rights, Brunswick made numerous repossessions, and attempted to dispose of the repossessed equipment at discount prices. Such sales, however, did not keep pace with repossessions. Brunswick's efforts to lease repossessed lanes to new independent proprietors proved unsuccessful. Over the years Brunswick had borrowed close to $300 million in order to finance the manufacture and sale of bowling equipment. By late 1964 its receivables were in excess of

$400 million of which more than $100 million dollars were over 90 days delinquent. Brunswick was clearly in serious financial difficulty.

In an effort to reverse its deteriorating condition, Brunswick's management decided on a plan. In those cases in which attempts to collect receivables failed, it would repossess the equipment and attempt to sell it in place to third parties. If no sale could be effected Brunswick would then consider operating the failing centers itself if there appeared to be any reasonable prospect that a positive cash flow would result.

In January 1965 Brunswick formed a Bowling Center Operations Division (BCOD) charged with the responsibility of evaluating centers and operating those which could produce a positive cash flow. This development was disclosed by Brunswick's president to a meeting of the Bowling Proprietors Association, a retail level trade group, in 1965.

Between 1965 and 1972 BCOD evaluated over 600 defaulting centers for possible operation, commenced operating 222 of these, disposed of 11 to third parties, and closed 43 which proved unable to develop a positive cash flow. The highest number operated by Brunswick at any one time was 169. The largest number of centers taken over by Brunswick for operation in any year was 124 in 1965. Of these, centers in three areas are the subject of this appeal. They are Dutchess Lanes in Poughkeepsie, New York, Belmont Lanes in Pueblo, Colorado, and Fair Lawn Lanes, Interstate Lanes, Ten-Pin-on-the-Mall and Lodi Lanes in or near Paramus, New Jersey.

In each of the local retail market areas a Treadway subsidiary operated a bowling center competing for retail customers with the bowling centers taken over by Brunswick. The parties concede that each of these areas, Poughkeepsie, Pueblo, and Paramus, is a separate retail market for recreational bowling. Treadway does not manufacture or distribute bowling equipment or supplies.

The method used by Brunswick in taking over the operation of the six centers in issue was not identical. For our purposes, however, we can generalize. The acquisitions in question were by a major manufacturer of bowling equipment and supplies who took over bowling centers by means of stock or asset purchases. These newly-acquired facilities competed horizontally at the retail level with Treadway facilities and were kept in business by Brunswick when they otherwise would have failed.[5]

We can conclude our background survey of the bowling industry by noting that Brunswick now operates the largest number of retail bowling centers in the United States—167. The next largest retail bowling chain operates only 32 centers, and the rest of the retail market is fragmented among smaller chains and individual operators. It is conceded that the relevant market is local, however, not national. Brunswick's net assets far exceed the net assets of any other chain of bowling centers and it enjoys those additional advantages which accrue from being the manufacturer of the equipment used in its centers.

III. Summary of Plaintiffs' § 7 Theory

This case involves a "deep pocket" manufacturer's decision to integrate vertically forward into local retail markets and to compete with smaller competitors having shallower pockets. The jury verdict in favor of Brunswick on the Sherman Act § 2 claim establishes that this forward integration was not done in an attempt to monopolize the local retail bowling market. Plaintiffs contend, however, that the entry of such a competitor into these markets had the potential for lessening horizontal competition and that such potential lessening of competition suffices to establish a § 7 violation. It is therefore argued that Brunswick's

5. By contrast with Brunswick, although AMF undoubtedly suffered from the decline in the bowling recreation industry in the early 1960's it never integrated forward into the retail end of the business so as to be in competition with its actual or potential customers.

presence in these markets was illegal, and that plaintiffs suffered damages within the meaning of § 4. These damages were suffered, it is suggested, because in the absence of that illegal presence the acquired centers would have gone out of business thus effectively transferring customers to Treadway's centers.

IV. Was a Prima Facie Violation of § 7 Established?

A. *The potential effect on competition.*

This case does not present the classic § 7 problem of a merger with, or a purchase of assets from, a competitor on the same competitive level. Nevertheless, Brunswick's acquisitions had two aspects of possible significance for § 7 purposes. First, Brunswick was a major manufacturer integrating vertically forward into its customer market. Second, it was a giant entering local markets inhabited by pygmies. While both factors may have significance for purposes of § 7, in this case the first factor standing alone is not significant.

A major vice of vertical combinations is market foreclosure to competing manufacturers. *See Brown Shoe Co. v. United States,* 370 U.S. 294, 323-24 (1962). But in the bowling industry there is only insubstantial continuous distribution from manufacturer to retailer. The principal products of the manufacturing end of the industry—pinsetters and alleys—are one-shot affairs, and the sales of these products by Brunswick had already taken place long before their reacquisition. It cannot be said, and it has not been shown, that AMF suffered or was likely to suffer any market foreclosure as a result of those reacquisitions. Moreover, Treadway is neither an actual nor a potential competitor at the manufacturing level, and hence is not a potential market foreclosure victim. Thus it probably lacks standing to assert the manufacturer's market foreclosure issue. In any event, manufacturer's market foreclosure is not the theory Treadway advances.

The second characteristic of the acquisition, however, is its potential effect on retail level competition. The entry of a giant into a market of pygmies certainly suggests the possibility of a lessening of horizontal retail competition. This is because such a new entrant has greater ease of entry into the market, can accomplish cost-savings by investing in new equipment, can resort to low or below cost sales to sustain itself against competition for a longer period, and can obtain more favorable credit terms. There is evidence from which the jury could have found that several of these factors applied to Brunswick's acquisitions in the Poughkeepsie, Paramus and Pueblo markets. Treadway urges that this evidence suffices to sustain the verdict that there was a § 7 violation. Brunswick, on the other hand, argues that there must be a showing of actual lessening of competition before the jury can find such a violation. We think, however, that Brunswick's argument confuses the showing which must be made to sustain recovery under § 4 with that which must be made to show a § 7 violation.

Three § 7 cases suggest that there was sufficient evidence here to go to the jury on the theory that Brunswick's entry into a local retail market both created the possibility of substantially lessening horizontal retail competition and tended toward the creation of a retail monopoly. Although these cases arose in three different merger contexts, they all involved the potential effect of mergers on horizontal competition.

Brown Shoe Co. v. United States, supra, involved a merger in which a major shoe manufacturer and retailer (Brown) acquired another retailer (Kinney). Thus, the merger had both vertical and horizontal aspects. First, the Court held that the vertical aspect of the merger—Brown's acquisition of a retailer—had potential market foreclosing effects for competing manufacturers and thus violated § 7. Second, the Court held that the Brown-Kinney combination had a potential for substantially lessening competition at the retail level. This conclusion was reached

even though Brown and Kinney, in combination, controlled but a small percentage of the retail shoe market, and even though Brown and Kinney had competed in only a small fraction of the geographic markets before the merger. It is true that since they did compete at retail, at least in a fraction of the geographic markets, the combination fits the classic § 7 pattern of a merger of competitors at the same level. But the significance of *Brown Shoe* lies less in that fact than in the Court's analysis of the probable effect of the merger on horizontal retail competition. Brown and Kinney in combination controlled only a small percentage of the retail shoe market. Yet, the Court declined to look at the mere quantitative substantiality of the resulting concentration. Instead it looked at qualitative substantiality. Among the qualitative factors which it mentioned were: (1) the fragmented nature of the retail industry; (2) the ability of a strong national chain to insulate selected outlets from the vagaries of local competition in selected locations; (3) the style leadership of the large chains and its effect on competitors' inventories; (4) the ability of an integrated manufacturer-retailer to eliminate wholesalers by increasing the volume of its retail purchases from its manufacturing division; and (5) the historical tendency toward concentration in the industry. 370 U.S. at 344-45. Finally, the court perceived in § 7 a congressional intention to protect small competitors even at the short run expense of consumers. It wrote:

> "[E]xpansion is not rendered unlawful by the mere fact that small independent stores may be adversely affected. It is competition, not competitors, which the Act protects. But we cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization. We must give effect to that decision." 370 U.S. at 344.

Of the major qualitative substantiality factors referred to in *Brown Shoe* there is evidence in this case tending to show that at least four may have been operative in the retail bowling recreation industry: a fragmented industry, the ability of a strong national chain to insulate itself from competitive vagaries in a local market Brunswick's promotional (style) leadership, and, after the debacle of the early 1960's, the tendency toward concentration. This is not to suggest that the evidence on any such factor was undisputed.

The qualitative substantiality approach of *Brown Shoe* pointed out rather clearly that although Brown and Kinney were retail competitors this factor was not of crucial significance for purposes of § 7. Many of the factors could result from the vertical integration of a pygmy into a giant in any wholesale or retail market. Shortly after *Brown Shoe* Chief Justice (then Judge) Burger so read the case. *Reynolds Metals Co. v. FTC*, 309 F.2d 223 (D.C. Cir. 1962). There a manufacturer of aluminum, Reynolds, acquired its customer, Arrow, a converter of aluminum into florist foil. The florist foil conversion industry was a line of commerce which consisted of approximately eight competitors who sold to 700 wholesale florist outlets. The District of Columbia Circuit refused to set aside an FTC order requiring divestiture. The court held, on the authority of *Brown Shoe*, that Arrow's assimilation into Reynolds' enormous capital structure and resources gave it an immediate advantage over its competitors. This advantage might have had the effect of substantially lessening competition or might have tended to create a monopoly.[6]

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6. Chief Justice (then Judge) Burger wrote:
"When Arrow was vertically integrated through the Reynolds' acquisition, one minor anti-competitive effect foreseeable was the exclusion of other manufacturers of raw foil (Reynolds' competitors) from selling to approximately 33% of the florist foil converting industry. However, neither the examiner nor the Commission rested their conclusions that Sec. 7 had been violated on this basis, nor should we. The truer picture of anti-competitive effect emerges from even the most cursory consideration of the post-acquisition competitive postures of the eight previously independent florist foil converters *vis a vis* one another. Arrow's assimilation into

In 1967 the Supreme Court made explicit what had been implicit in *Brown Shoe*—that a merger or acquisition fell within § 7 even though the acquiring corporation and the acquired one were not competitors and even though the transaction did not involve potential market foreclosure of suppliers. In *FTC v. Proctor & Gamble Co.*, 386 U.S. 568 (1967), it affirmed an FTC determination that Proctor & Gamble's acquisition of Clorox Chemical Company in a "product extension" merger violated § 7. Horizontal competition in the household bleach market was threatened, the Court concluded, because Clorox, already a dominant force in that market, would have the benefit of Proctor & Gamble's advertising discounts, retailing distribution network, and deep pocket. New entrants into the bleach market might be discouraged, active competition might be inhibited by fear of retaliation from so strong a force, below cost sales might be financed by Proctor & Gamble's deep pocket.

The marketing of household bleach is, of course, only remotely comparable to the marketing of recreational bowling. But the Court's analysis in *Proctor & Gamble* shows that Chief Justice Burger's reading of *Brown Shoe* was correct. In some industries the acquisition of a competitor by a deep pocket parent can have sufficient potential to harm horizontal competitors so as to violate § 7. There was sufficient evidence of such potential here to submit the case to the jury on the issue of effect on competitors.

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6. (Cont'd.)
Reynolds' enormous capital structure and resources gave Arrow an immediate advantage over its competitors who were contending for a share of the market for florist foil. The power of the "deep pocket" or "rich parent" for one of the florist foil suppliers in a competitive group where previously no company was very large and all were relatively small opened the possibility and power to sell at prices approximating cost or below and thus to undercut and ravage the less affluent competition. The Commission is not required to establish that the Reynolds' acquisition of Arrow did in fact have anti-competitive consequences. It is sufficient if the Commission shows the acquisition had the capacity or potentiality to lessen competition. That such a potential emerged from the combination of Reynolds and Arrow was enough to bring it within Sec. 7." 309 F.2d at 229-30 (footnote omitted).

B. *The "in commerce" requirement.*

Section 7 applies when a corporation "engaged in commerce" acquires the stock or assets of "another corporation engaged also in commerce." At the time this case was tried, the Third Circuit was committed to the proposition that the Clayton Act § 7, like §§ 1 and 2 of the Sherman Act, represented an exercise of Congress' full powers under the commerce clause. In *Transamerica Corp. v. Board of Governors*, 206 F.2d 163, 166 (3d Cir.), *cert. denied*, 346 U.S. 901 (1953), Judge Maris wrote that Congress, in enacting § 7, intended "to exercise its power under the commerce clause of the Constitution to the fullest extent."

Had the district court been possessed of perfect foresight, it would have foreseen a major development in § 7 law that was just over the horizon. In *United States v. American Building Maintenance Industries*, 43 U.S.L.W. 4838 (U.S. June 24, 1975), the Supreme Court considered the jurisdictional reach of § 7.[7] It concluded that unlike §§ 1 and 2 of the Sherman Act, § 7 did not encompass the whole of the commerce power. Effectively, *Transamerica Corp. v. Board of Governors, supra*, had been overruled. The Supreme Court wrote:

> "In sum, neither the legislative history nor the remedial purpose of § 7 of the Clayton Act, as amended and reenacted in 1950, supports an expansion of the scope of § 7 beyond that defined by its express language. Accordingly, we hold that the phrase 'engaged in commerce' as used in § 7 of the Clayton Act means engaged in the flow of interstate commerce, and was not intended to reach all corporations engaged in activities subject to the federal commerce power." 43 U.S.L.W. at 4842.

Applying this new standard to the record before us is a problem of no little difficulty. In fact, had the district court granted a motion to dismiss at the close of the plain-

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7. It had refused expressly to decide the question in Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 202 (1974).

tiffs' case, on the ground that the new § 7 threshold had not been met, we might have been inclined to affirm that decision. There was, however, some evidence in the record to suggest that at least some of the acquired bowling centers may have made purchases of pins, pinsetter parts and perhaps other supplies, directly from Brunswick, rather than from local distributors. Thus, they arguably were engaged "in the flow of interstate commerce" within the meaning of the new § 7 test. We think it would be unjust, given the intervening change in the law, to find that the evidence presented was insufficient to cross the jurisdictional threshold and thus order that the district court dismiss the case. We think it more appropriate, consistent with the way in which we will ultimately dispose of the case, to have the "in commerce" question relitigated, with the plaintiffs' being given an opportunity to satisfy the new and more stringent jurisdictional test. See 28 U.S.C. § 2106.

V. Does § 4 Provide A Private Remedy For This § 7 Violation?

Until the Supreme Court read the first paragraph of § 7 disjunctively in the *du Pont* cases [8] so that it covered not only the horizontal acquisition of a competitor, but also acquisitions of non-competitors, the possibility of private recovery for a § 7 violation was remote. *Du Pont* involved a § 7 violation resulting from du Pont's acquisition of a 23% stock interest in General Motors, a company to which du Pont supplied paint and fabric. Subsequently, minority stockholders of General Motors brought a derivative action against du Pont seeking (1) § 4 damages from du Pont for the § 7 violation found in the government case, (2) damages for violations of §§ 1 and 2 of the Sherman Act, and (3) damages for a breach of a common law fiduciary duty. In an interlocutory decision, the district court held that since § 7 violations involved potential restraints or monopolizations such violations could not support recoveries under § 4 for injuries to business or property.[9] The case proceeded to trial on the Sherman Act and fiduciary duty claims and resulted in a judgment for du Pont.[10] On appeal from this final judgment the Second Circuit reversed the earlier interlocutory holding that a § 7 violation could not be the basis for a § 4 recovery. *Gottesman v. General Motors Corp.*, 414 F.2d 956 (2d Cir. 1969). (*Gottesman I*). Judge Feinberg's opinion required, in effect, that the plaintiff show (1) a violation of § 7, (2) an actual injury causally connected to the violation, and (3) damages of a reasonably certain amount flowing from the causally connected injury. The § 7 violation in the *du Pont-General Motors* case was the potential market foreclosing effect of du Pont's 23% ownership of a large customer for automotive fabrics and finishes. The great significance of *Gottesman I* was that it did not hold that only those foreclosed from the General Motors market could recover. General Motors itself, which was not in the fabrics and finishes business, could recover as well. The Second Circuit remanded to the district court for a reconsideration of the evidence in the light of this interpretation of the interaction between § 7 and § 4.

On remand, the district court again held for du Pont.[11] When appealed, the Second Circuit, in an opinion by Judge Maris, affirmed. *Gottesman v. General Motors Corp.*, 436 F.2d 1205 (2d Cir.), *cert. denied* 403 U.S. 911 (1971) (*Gottesman II*). It is in this latter opinion that the Second Circuit fully considered the damage issue. Damages were not awarded because General Motors stockholders did not prove that the company paid a higher price to du Pont for fabric and finishes than was charged to other du Pont customers and did not prove that the materials in question could have been purchased on the open market, at lower

8. United States v. E. I. du Pont de Nemours & Co., 353 U.S. 586 (1957); *id.*, 366 U.S. 316 (1961).

9. Gottesman v. General Motors Corp., 221 F. Supp. 488 (S.D. N.Y. 1963), *leave to appeal denied*, (2d Cir. Jan. 31, 1964), *cert. denied*, 379 U.S. 882 (1964).

10. 279 F. Supp. 361 (S.D. N.Y. 1967).

11. 310 F. Supp. 1257 (S.D. N.Y. 1970).

prices, with equal quality and service. Plaintiffs did not prove, in other words, that General Motors' business or property had been injured.

Brunswick and Treadway attach diametrically opposed significance to *Gottesman I* and *II*. Brunswick's theory is that there can be a § 4 recovery only if there is an actual foreclosure of competitors or an actual lessening of competition which results in injury. That approach may work in a situation such as *du Pont-General Motors* where the § 7 violation depends upon the potential for market foreclosure. A party losing foreclosed sales might then recover lost profits, and the foreclosed customer such as General Motors, might recover overcharges. But when the § 7 violation depends upon the potential injury to a horizontal competitor at the same level as the acquired company, Brunswick's approach would virtually preclude recovery by the competitor until he has been driven out of business.

Brunswick also focuses on the "substantially to lessen competition" language of § 7 and urges that no recovery can be had when activity in the marketplace has the effect of preserving a competitor and reducing consumer prices. But to focus on short run beneficial effects on consumer prices is to disregard the disjunctive "or tend to create a monopoly" clause in § 7, and to confuse injury to the public with injury to competitors. The public is not injured while a potential monopolist is vigorously competing to achieve monopoly power, though that injury may come later. Competitors, on the other hand, are injured in their business or property in a short-run period of predatory competition. Brunswick would permit recovery only when there is an injury to competition (such as market foreclosure) and an injury to the competitor.

Treadway's theory differs from Brunswick's. It argues that if an acquisition is illegal under § 7 because it has a sufficient potential to injure competition or to tend to create a monopoly, then the mere presence of the violator in the market which in fact produces a causally linked injury

to the business or property of the competitor suffices for a § 4 recovery. To require more it urges, is to force a private plaintiff to prove a Sherman Act § 1 or § 2 violation and to eliminate private damage recoveries for § 7 violations.[12] Under Treadway's theory it can recover the profits on any sales which it lost by virtue of Brunswick's presence, or any sales which it would have gained in Brunswick's absence.

Treadway's interpretation of the interaction between § 7 and § 4 obviously has far-reaching ramifications. Nevertheless, we believe it to be more consistent with the purposes of § 7 to hold that illegal presence which causes injury to the business or property of a competitor is compensable under § 4. This is not to say that proof of a § 7 violation will permit every competitor of the acquired company to recover automatically. As can be seen from *Gottesman II*, the proof of causal connection and of damage still is formidable.

We hold, then, that a horizontal competitor of a company acquired by a deep pocket parent in violation of § 7 can recover damages under § 4 if it shows injury in fact causally related to the violator's presence in the market, whether or not that injury flows from or results in an actual lessening of competition. In this case there was sufficient evidence to go to the jury on the fact of such injury, although as we indicate hereafter there are difficulties with the manner in which the issue was framed in the court's charge.

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12. In *Gottesman I* the Second Circuit wrote:

"The basis of the pre-trial ruling was that a section 7 violation can cause no damage because it establishes only that harm was threatened, not that it occurred. But if the threat ripens into reality we do not see why there can never be a private cause of action for damages. . . ." 414 F.2d at 961.

Referring to this language, two prominent commentators have noted:

"It becomes readily apparent that if the plaintiff has to establish that the threatened harm (probable restraint or monopolization) has ripened into reality, he, in effect, has the burden of establishing an actual restraint or actual monopolization. Thus, the practical effect might be to transform into an action based on §§ 1 and 2 of the Sherman Act a suit based on § 7 of the Clayton Act." Kintner & Wilberding, Enforcement of the Merger Laws By Private Party Litigation, 47 Ind. L.J. 293, 312 (1972).

VI. Did The Court Properly Charge A § 7 Violation?

A. *The impact on competition.*

In presenting the case to the jury the district court first charged on the Sherman Act § 2 aspects on which, as we pointed out above, there was a verdict for Brunswick. The court then turned to the § 7 count, explaining that there were three elements involved in determining whether Brunswick violated that section: (1) the relevant lines of commerce, (2) the relevant geographic markets, and (3) "the likely anticompetitive effects of the acquisition of bowling centers in the relevant local market." (4 App. at 2268a). The court then indicated that there were three relevant geographic markets for bowling center operations, and continued:

> "You must decide whether the effect of the acquisition of bowling centers by Brunswick may be substantially to lessen competition or tend to create a monopoly in that 'line of commerce' and 'section of the country.'
>
> The determination of this question will establish whether or not this acquisition was a violation of Section 7 of the Clayton Act.
>
> This determination must be made in light of several factors: the primary index of legality is the market share of the acquired and acquiring companies and the extent of concentration in the industry.
>
> An acquisition which produces a firm controlling an undue percentage of the relevant market and resulting in a significant increase in concentration is presumptively unlawful, unless the defendants can overcome this presumption by other evidence to establish the vigor of competition or affirmative justifications in support of the acquisition.
>
> While market shares are not determinative of legality of an acquisition, I instruct you that high market shares and significant increases in concentration may be sufficient in itself to establish a violation of Section 7. Section 7 of the Clayton Act may be violated either by showing a reasonable probability of a substantial lessening of competition in the future or by showing a substantial lessening of competition which has already occurred." (4 App. at 2269a-70a).[13]

This charge, in the context of the acquisition of retail outlets in relatively small geographic markets, was virtually a directed verdict. Without highlighting other factors, it emphasized the market share held by Brunswick in each of the markets in question, after the acquisitions.

The charge was defective in a number of ways. It did not say, for example, that the jury must consider such factors as the relative financial strength of Brunswick,

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13. Referring later to specific acquisitions the court reiterated its emphasis on quantitative substantiality:

> "Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Pueblo area beyond an insubstantial amount, say beyond 10 to 15%, may be sufficient for you to conclude that competition has substantially been lessened. Consequently, you properly may conclude that Brunswick by the acquisition of Belmont Lanes violated Section 7 of the Clayton Act because Brunswick through that acquisition obtained allegedly more than 20% of the Pueblo, Colorado, bowling center market." (4 App. at 2317a-18a).
>
> "Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Poughkeepsie area beyond an insubstantial amount, say beyond 10 to 15 per cent, may be sufficient for you to infer that competition has substantially been lessened.
>
> Consequently, you may properly conclude that Brunswick by the acquisition of Dutchess Lanes violated Section 7 of the Clayton Act because Brunswick through that acquisition obtained more than 20 per cent of the Poughkeepsie, New York bowling center market." (4 App. at 2319a-20a).
>
> "Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Paramus area beyond an insubstantial amount, say beyond 10 to 15 per cent, may be sufficient for you to infer that competition has substantially been lessened.
>
> Consequently, you may properly conclude that Brunswick by the acquisition of Interstate, Fair Lawn, Ten Pin Lanes and Lodi Lanes violated Section 7 of the Clayton Act because Brunswick through those acquisitions obtained allegedly 39 per cent of the Paramus, New Jersey, bowling center market." (4 App. at 2320a-21a).

Treadway, and other competitors. This would have been significant, for although Brunswick was many times larger than Treadway, the latter was still a large public company, and in the bowling recreation industry there are practical limitations on the extent to which capital may be utilized for competitive advantage. Nor did the charge say that the jury must find that Brunswick's position as an equipment manufacturer or equipment financier gave it any retail market advantage.[14] Certainly if the vertical integration forward had this effect the jury could have found a tendency toward monopolization or the potential for a substantial lessening of competition. The jury also was not asked to take into account the historical tendency in the industry toward concentration or lack of such a tendency.

By emphasizing the quantitative substantiality of the market shares held by Brunswick, to the exclusion of other factors, the court failed to draw the jury's attention to the indicators of qualitative substantiality referred to in *Brown Shoe Co. v. United States, supra, Reynolds Metals Co. v. FTC, supra,* and *FTC v. Proctor & Gamble Co., supra.* While the quantitative substantiality of the market shares is important in a case involving a merger of horizontal competitors, it is far less important here because Brunswick was not previously in any of the three markets. Brunswick's entry into the picture did not increase concentration, but only acted as a substitution of competitors.

Treadway would have us overlook the deficiencies in the § 7 charge because extensive "deep pocket" evidence was introduced on the Sherman Act § 2 claim and the jury was instructed as to the relevancy of that evidence to that claim. There are two obstacles here. First, the court in its instructions quite clearly treated the two counts separately, and

14. As to Brunswick's position as a manufacturer and financier, the district court repeated the following charge with respect to each of the three markets in dispute:

"You may consider that Brunswick describes itself as 'Number One in Bowling' and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers." (4 App. at 2317a, 2319a, 2320a).

we must assume that the jury understood as much. Second, because of the verdict in Brunswick's favor on the Sherman Act § 2 count we cannot speculate as to how the jury evaluated the "deep pocket" evidence.

Because the § 7 charge was inappropriate to the only theory upon which a § 7 violation could in the circumstances of this case be predicated, a new trial is required.

B. *The commerce requirement.*

The district court charged:

> "Each of these plaintiffs, to be entitled to prevail on its claim under Section 7 of the Clayton Act, must prove . . . :
>
> First, that the assets acquired by the defendant were acquired from a corporation engaged in interstate commerce." (4 App. at 2342a).

Elsewhere, however, the court had charged:

> "The undisputed evidence shows that Brunswick acquired Belmont Lanes in April 1965. As a matter of law this was an acquisition in a line of commerce, the operation of bowling centers, in a section of the country, namely, the Pueblo, Colorado, metropolitan area." (4 App. at 2317a).

It gave almost the identical instruction with respect to the Poughkeepsie acquisition. (4 App. at 2319a).

Brunswick contends (1) that the charge is internally inconsistent and (2) that the specific reference to the acquisitions being in a line of commerce amounted to a directed verdict on the interstate commerce issue. We think, however, that in the first quotation the court refers to the "engaged in commerce" requirement, while in the second, it refers to the "in any line of commerce in any section of the country" requirement. Certainly bowling centers are in a line of commerce in a section of the country, although

arguably they are only engaged in local rather than interstate commerce.

The interstate commerce charge is cryptic but we need not comment on it any further. When the case is retried, the district court will have to apply the new § 7 interstate commerce test laid down in *United States v. American Building Maintenance Industries, supra.* See Part IV B, *supra.*

VII. Was The Jury Properly Instructed On § 4 Damages?

We have already held that a horizontal competitor injured in its business or property by the presence in the market of a § 7 violator can recover under § 4. Treadway had the burden under § 4 of establishing the fact of such injury, the proximate causal relationship of that injury to Brunswick's presence in the market, and the amount of damage suffered.

To meet this burden the only evidence offered by plaintiffs was the expert opinions of several witnesses as to what profits the Treadway bowling centers would have made if Brunswick, instead of acquiring the centers, had permitted them to close.

The court charged:

> "Plaintiffs' witnesses Kenney, Mendelson, Davis, Lieblich and Gonzalez, all were qualified as expert witnesses. They were entitled to give their opinion as to profits which the plaintiff bowling centers would have made but for defendant's violations of law. These witnesses estimated the amount of business which would have come to plaintiffs' bowling centers if Brunswick had not operated a competitive center or had permitted it to close down in the normal course. . . .
>
> Although there was some differences in amount, these witnesses mutually corroborated each other both

> in the methods used in determining damages and in general estimates as to the extent of damages. I instruct you that if you believe any one of Messrs. Kenney, Mendelson, Davis, Lieblich and Gonzalez was telling the truth, then you must believe that all were telling the truth since they mutually corroborated each other and since there was no contradictory evidence offered by Brunswick as to extent of damages, except that the defendant denies that the plaintiffs are entitled to any damages.
>
> . . . You may disregard this testimony as to damages only if you find all these witnesses, Messrs. Kenney, Mendelson, Davis, Lieblich and Gonzalez, were discredited or impeached by contradictory evidence. I instruct you that if you find that the antitrust laws have been violated and that plaintiffs' corporations have been injured thereby, then you must also find damages in the amounts falling within the range as indicated by the testimony and exhibits, apart from any determination you may make as to those damages related to Fort Lauderdale and to plaintiffs' various interest expenses." (4 App. at 2326a-27a).

The court then reviewed the damage testimony. The thrust of this instruction, indeed the thrust of plaintiffs' § 4 theory, was that damages were to be computed by first assuming that each Brunswick-acquired center would have closed down at the moment of the takeover, but for the takeover and then by projecting what portion of the closed center's business would have been captured by Treadway's centers. However, since plaintiffs' § 7 theory was based on the presence of the violator, Brunswick, in the market, the jury should have been determining what plaintiffs' profits would have been if the violations had *never* occurred. In other words, the jury should have first been instructed to find whether the acquired centers would, in fact, have gone out of business, rather than being taken over by someone

else or continuing in business by extensions of credit. Such a finding was a prerequisite to establishing any proximate causal relationship between the § 7 violation and the only evidence of injury to business or property which was presented.

The inadequacy of the § 4 charge is brought into sharp relief by the court's instruction on the so-called "failing company" defense.[15] Since the jury rejected this defense with respect to each of the acquired centers, it must have concluded that none of the centers would inevitably have gone out of business. In the § 7 context the failing company defense was a matter on which the defendant Brunswick had the burden of proof. But in the § 4 context plaintiffs had the burden of proving an injury to their property or business proximately related to the violation. The effect of the damage charge was to relieve them of that burden and permit the jury to award damages on a theory which assumed an essential fact on which no finding was made.

The damage charge was defective in another respect. The court referred to the testimony of Treadway's witnesses estimating the amount of business which would have come to the Treadway Centers had the acquired centers closed down and to an exhibit recapitulating that testimony. Next it noted that Brunswick had not offered evidence on the damage question, and charged

> "I instruct you that if you find that the antitrust laws have been violated and that the plaintiffs' corporations

15. The court charged:

"A company is not a failing company merely because it is experiencing financial difficulties or temporary losses.

To qualify under the failing company doctrine, the resources of the acquired business must be so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure.

The 'failing company' defense, therefore, is a very restricted one. The acquiring company must show that the acquired company faced the grave probability of business failure, and that it was the only available buyer.

And it must show that there was no prospect for reorganizing the company which was acquired.

If some of the centers which Brunswick acquired were not failing, and if operators other than Brunswick could and would have acquired the centers in question, the doctrine does not apply." (4 App. at 2321a-22a).

> have been injured thereby, then you must also find damages in the amounts falling within the range as indicated by the testimony and exhibits. . . ." (4 App. at 2327a).

This was error, for it is clear that a trier of fact is at liberty within the bounds of reason to reject in whole or in part the uncontradicted testimony of a witness which does not convince the trier of its merit. This rule applies on the issue of damages as on any factual issue. *Rhoades Inc. v. United Air Lines, Inc.*, 340 F.2d 481, 485 (3d Cir. 1965).

Even if the § 7 charge had been entirely proper we would award a new trial because of the § 4 instruction.

Brunswick would have us hold that the jury's rejection of the failing company defense means that the only factual premise upon which plaintiffs' § 4 injury to property or business theory may be predicated has been decided against it, and that Brunswick should have judgment rather than a new trial. But the jury may only have decided that Brunswick had not established the defense by a preponderance of the evidence, and probably did not consider whether in order to find a § 4 injury it had to find that the acquired centers would have closed. Since there is evidence from which the jury might have found that the centers would have closed, a new trial with proper instructions is appropriate.

VIII. The § 16 Relief

A. *The district court's finding of a § 7 violation.*

Based upon the same evidence presented to the jury the district court concluded that the violation of § 7 warranted injunctive relief pursuant to the Clayton Act § 16. In doing so it rejected Brunswick's argument that the favorable verdict on the Sherman Act § 2 attempt to monopolize count established its beneficent intentions, and that no relief should be awarded on the assumption that the acquisitions might "tend to create a monopoly." It requested the court

to make specific findings of misconduct as a predicate for specific injunctive relief. To some extent the court did so, but it is clear that an essential predicate for the decision was that the jury verdict established Brunswick's unlawful presence in the market.[16] Since this is so, and since we are granting a new trial on the § 7—§ 4 aspects of the case, we conclude that the § 16 order must also be set aside. We are obliged, of course, to review the district court's findings of fact by a different standard. But with clear indications of the court's reliance on the jury's verdict, a verdict which we have concluded is tainted by erroneous legal instructions, we think the § 16 relief must also be reconsidered after a new trial.

B. *The divestiture order.*

Since we are granting a new trial the district court may again be asked to consider whether divestiture is a remedy available to a private plaintiff under § 16 of the Clayton Act. The authorities on that issue differ.[17] Until

16. The district court stated:

"In fashioning this remedy, I find it necessary to expressly state the factual basis on which I shall make my ruling. Although I have specifically made findings concerning the anti-competitive practices utilized by the defendant in causing the plaintiffs' injury, I also find in the alternative that the factual presence of the defendant in this market is sufficient to prompt the equitable intervention of this Court. In so finding, I adhere to the argument advanced by the plaintiffs that actual anti-competitive effects, let alone the causal mechanisms by which they were induced, are not necessary precedents to finding a violation of Clayton Section 7 nor to ordering equitable relief.

. . . The very fact of the jury's finding, unless it was so erroneous as to demand a judgment n.o.v. which I have previously denied, is sufficient to support my present decision to order injunctive relief." 389 F. Supp. at 1000-01.

17. Cases declining to grant a private divestiture remedy include: International Tel. & Tel. Corp. v. General Tel. & Electronics Corp., No. 73-1513 (9th Cir. Apr. 25, 1975); Continental Sec. Co. v. Michigan Cent. R.R., 16 F.2d 378 (6th Cir. 1926), *cert. denied*, 274 U.S. 741 (1927); American Commercial Barge Line Co. v. Eastern Gas & Fuel Associates, 204 F. Supp. 451 (S.D. Ohio 1962); Graves v. Cambria Steel Co., 298 F. 761 (S.D. N.Y. 1924) (L. Hand, J.); Venner v. Pennsylvania Steel Co., 250 F. 292 (D. N.J. 1918).

Cases suggesting the availability of a private divestiture remedy include: International Tel. & Tel. Corp. v. General Tel. & Electronics Corp., 351 F. Supp. 1153, 1203-11 (D. Hawaii 1972) and Calnetics Corp. v. Volkswagen of America, Inc., 348 F. Supp. 606, 614-17 (C.D. Cal. 1972), both of which are

the Ninth Circuit's recent opinion in *International Telephone & Telegraph Corp. v. General Telephone & Electronics Corp.*, No. 73-1513 (9th Cir. Apr. 25, 1975), no court had made any real effort to analyze the problem in terms of congressional intention. The Ninth Circuit opinion makes an exhaustive analysis of the available legislative history and concludes, learned commentary to the contrary notwithstanding,[18] that Congress did not intend to create a private divestiture remedy when it enacted the injunctive relief provision of § 16.

No third Circuit opinion enlightens us on this problem. We have independently reviewed the available legislative history referred to in Judge Goodwin's extended opinion in *International Telephone & Telegraph Corp. v. General Telephone & Electronics Corp., supra.* We agree that it supports his conclusion that many members of the Senate and House Committees which considered the problem in the Sixty-third Congress assumed that § 16 did not create a private divestiture remedy. We will not burden this opinion with a repetition of Judge Goodwin's analysis.

It is quite another question whether legislative history from 1914, strong as it appears, should control the contemporary application of a statute laying down a fundamental national economic policy. This is especially true when the significance of the circumstances to which application is sought were perceived dimly, if at all, at the time of passage. The antitrust laws are of necessity statements of

17. (Cont'd.)

reversed on the issue by International Tel. & Tel. Corp. v. General Tel. & Electronics Corp., *supra;* Credit Bureau Reports, Inc. v. Retail Credit Co., 358 F. Supp. 780 (S.D. Tex. 1971), *aff'd*, 476 F.2d 989 (5th Cir. 1973); Bay Guardian Co. v. Chronicle Publishing Co., 340 F. Supp. 76 (N.D. Cal. 1972); Burkhead v. Phillips Petroleum Co., 308 F. Supp. 120 (N.D. Cal. 1970); Julius M. Ames Co. v. Bostitch, Inc., 240 F. Supp. 521 (S.D. N.Y. 1965); Bailey's Bakery, Ltd. v. Continental Baking Co., 235 F. Supp. 705 (D. Hawaii 1964), *aff'd per curiam*, 401 F.2d 182 (9th Cir. 1968), *cert. denied*, 393 U.S. 1086 (1969).

18. Note, Availability of Divestiture in Private Litigation as a Remedy for Violation of Section 7 of the Clayton Act, 49 Minn. L. Rev. 267 (1964).

general principle. They must be given meaning in specific applications on a case-by-case basis. It is impossible for a legislature to devise codes so all-encompassing as to predict every case to which the general principle should apply. So, too, with antitrust remedies. There is a danger in permitting the pronouncements of statesmen long deceased to control the contemporary meaning of statutes which are almost an economic constitution for our complex national economy.

But we need not, in this case, decide a rule of general application with respect to the availability of divestiture relief under § 16. Even if such a private remedy is available, it would in our view be inappropriate because less drastic relief will provide sufficient redress.

It must be recalled that we are dealing with three specific geographic markets, and thus with three separate problems of relief. The focus of the remedy, then, must be on what can be accomplished to overcome the threat to competition in those specific markets. If the suit had been commenced at a time when the court might have prevented the acquisitions by Brunswick or any other deep pocket owner, and if it had done so, one of two things might have happened. Brunswick might have allowed the bowling centers to close, and would thereby have eliminated any § 4 injury to plaintiffs' property or business. Alternatively, Brunswick might have found another purchaser whose presence in the market would have retained the same level of competition. The injury to Treadway's property or business at least on this record would have been the same, but there would have been no § 7 violation on which to predicate either a § 4 or a § 16 action. At this late stage, ten years after the acquisition, divestiture of going, thriving bowling centers to other purchasers will not change the competitive picture. By now the formerly threatened businesses have survived.

An alternative to a sale, of course, would be to dismantle the centers. But at this time such a procedure would

merely reduce competition artificially in the three markets to the detriment of the public. If this had been a merger between competitors so that its effect would almost inevitably have been anticompetitive, divestiture, if authorized, might have been appropriate. But where the § 7 violation is by a new entrant purchasing an existing competitor in an existing market, relief should be restricted to preventing those practices by which a deep pocket market entrant harms competition. Otherwise what is intended as a shield for smaller competitors becomes a sword against the consumer. Given the type of § 7 violation which plaintiffs alleged and attempted to prove, divestiture was simply inappropriate.

IX. Attorney Fees And Costs

Since we are granting a new trial on the treble damage claim, the award of attorney fees and costs must also be set aside.[19] But since the district court may be faced with the question of attorney fees after a new trial, it is appropriate to consider plaintiffs' contention that the principles of *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp., supra,* are applicable only to class actions and not to litigated antitrust cases. The district court properly understood the *Lindy Brothers* holding. It laid down principles of general application for the award of attorney fees. There is no exception for litigated antitrust cases. If a new award is made the court should be guided by the principles of *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp., supra;* and *Merola v. Atlantic Richfield Co., supra.*

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19. DeFilippo v. Ford Motor Co., 516 F.2d 1313, 1321 (3d Cir. 1975); Bryam Concretanks, Inc. v. Warren Concrete Products Co., 374 F.2d 649, 651 (3d Cir. 1967) (attorney fees not recoverable in absence of treble damage award).

CONCLUSION

The judgments appealed from in Nos. 74-2127 and 75-1152 will be reversed and the case remanded for further proceedings in accordance with this opinion.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

(A.O.—U. S. Courts, International Printing Co., Phila., Pa.)

APPENDIX B

Opinion of the U.S. District Court for the District of New Jersey Dated September 17, 1973

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civ. A. No. 595-66

September 17, 1973

TREADWAY COMPANIES, INC., *et al.*,
Plaintiffs,

v.

BRUNSWICK CORPORATION,
Defendant.

Cole, Geaney & Yamner, Paterson, N. J., Law Firm of Malcolm A. Hoffmann, Malcolm A. Hoffmann, New York City, for plaintiffs.

Stryker, Tams & Dill, Arthur C. Dwyer, Newark, N. J., Mayer, Brown & Platt, Miles G. Seeley, Thomas B. McNeill, Chicago, Ill., for defendant.

OPINION

WHIPPLE, District Judge:

The trial of this case began for the second time on March 13, 1973 and concluded on May 11, 1973 with the following verdicts being returned:

1. In favor of defendant Brunswick and against plaintiffs Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus, Paradise Bowl-O-Mat, Inc., Treadway Companies, Inc. (for losses claimed to have been suffered by the closing of Fort Lauderdale Bowl-O-Mat, Inc.), Treadway Companies, Inc. (for losses claimed to have been suffered by interest charges) and Indianapolis Bowl-O-Mat, Inc., with respect to the claims of monopolization and/or attempted monopolization asserted by them, under 15 U.S.C. § 2.

2. On the so-called "acquisition claims" based on § 7 of the Clayton Act, against defendant Brunswick and in favor of the following plaintiffs in the following amounts: Holiday Bowl-O-Mat, Inc., $298,800, Bowl-O-Mat Paramus Operations, $1,094,400; Pueblo Bowl-O-Mat, Inc., $964,830.

On May 31, 1973, this Court, having previously trebled the amounts awarded to the plaintiffs on the Section 7 claims pursuant to 15 U.S.C. § 15, entered judgments reflecting the jury verdicts. Within ten days after the entry of said judgments, defendant brought the instant motion pursuant to Fed.R.Civ.P. 50(b) for a judgment notwithstanding the verdict or in the alternative for a new trial. A more detailed statement of facts is not presently necessary; where facts do become operative, the Court will set them out. The grounds for the motion are numerous and will be treated *seriatim*.

I

[1-4] Motions for a judgment notwithstanding verdict, since they are, by definition, "intrusions upon the province of the jury", must be granted cautiously and sparingly.

Rumsey v. Great Atlantic and Pacific Tea Company, 408 F.2d 89, 91 (3rd Cir. 1969). In ruling on the motion, the Court must review the evidence and all reasonable inferences in a light most favorable to the party who prevailed at the trial. Thomas v. E. J. Korvette, Inc., 476 F.2d 471, 474 (3d Cir. 1973); *Rumsey, supra,* at 90 of 408 F.2d; 5A J. Moore, Federal Practice ¶ 50.07[2]. In fact, it is the general rule that such a motion may only be granted where "reasonable minds could reach no other conclusion". Pope v. Holiday Inns, Inc., 464 F.2d 1303, 1306 (5th Cir. 1972); Sotell v. Maritime Overseas, Inc., 474 F.2d 794, 796 (2nd Cir. 1973); Reeves v. Power Tools, Inc., 474 F.2d 375, 380 (6th Cir. 1973). It is the further duty of this Court upon the instant motion to refrain from weighing the evidence and to ignore the credibility of the witnesses. Cole v. Chevron Chemical Co.—Oronite Division, 477 F.2d 361, 367 (5th Cir. 1973). It is upon these procedural guidelines that defendant's motion will be considered.

Defendant's initial argument is that its motion for a directed verdict at the close of plaintiffs' case was improperly denied as a matter of law. The first specific argument under this general heading is that the plaintiffs failed to present any evidence from which the jury could properly conclude that defendant's operation of competing bowling establishments gave rise to any reasonable probability that competition would be lessened or that a monopoly would tend to be created in violation of § 7 of the Clayton Act, 15 U.S.C. § 18.

The crux of the defendant's hypothesis is that the activity in which it engaged cannot be violative of § 7 as a matter of law because that activity had the effect of preserving competition rather than reducing it. Entwined in

this proposition are the defendant's subordinate contentions that (a) even if competition could be lessened or a monopoly created by their actions, damages could not, as a matter of law, flow therefrom, and (b) even if damages could flow as a matter of law, none were proven.

[5] The only purely legal issue implicit in this theorem, in this Court's view however, is whether a private party can, as a matter of law, recover damages for a § 7 violation. The conceptual difficulty inherent in this question is that the Act speaks in terms such as "*may* be to lessen competition, or to *tend* to create a monopoly". Thus, can a violation caused by a tendency result in damages? The question was laid to rest in Gottesman v. General Motors Corporation, 414 F.2d 956, 960-961 (2nd Cir. 1969), cert. denied, 403 U.S. 911, 91 S.Ct. 2208, 29 L.Ed.2d 689 (1970):

> We agree with those authorities cited above that indicate that a violation of Section 7 of the Clayton Act does furnish a basis for a claim for money damages under the broad language of Section 4 of the Act. . . . The basis of the pre-trial ruling was that a Section 7 violation can cause no damage because it establishes only that harm was threatened, not that it occurred. But if the threat ripens into reality we do not see why there can never be a private cause of action for damages.

[6, 7] The legal issue of capacity being answered, the only remaining question is whether the plaintiff carried his burden of proof. As the court stated in *Gottesman*:

> If Section 7 is designed to prevent acquisitions that "may" or "tend to" cause specified harm, such an

> acquisition may either itself directly bring about the harm or make possible acts that do. We do not say that a Section 7 violation must, or even probably will, have that result; but that it may and that plaintiffs should have a chance to prove injury "by reason of" the violation are persuasive propositions.

414 F.2d at 961. The question of whether the plaintiffs proved their damages as a proximate result of the defendant's activities is one for the fact-finder, *see* Dailey v. Quality School Plan, Inc., 427 F.2d 1080 (5th Cir. 1970). There was ample evidence adduced at the trial to show how Brunswick's entry into the retail market lessened competition, *see* Reynolds Metals Co. v. F. T. C., 114 U.S. App.D. C. 2, 309 F.2d 223 (1962); Sanitary Milk Producers v. Bergjans Farm Dairy, Inc., 368 F.2d 679 (8th Cir. 1966), and this Court views the matter as one where reasonable minds could reach *more* than one conclusion. The instant motion, therefore, cannot be granted on this ground.

The next point pressed by the defendant is that plaintiffs failed to prove that the competing bowling establishments acquired by Brunswick were engaged in interstate commerce as required by § 7. The authority with respect to § 7 is nonexistent, but there are cases dealing with bowling under other sections of the antitrust laws. This authority can, it seems to this Court, be employed in the instant case.

Defendant cites Lieberthal v. North Country Lanes, Inc., 332 F.2d 269 (2nd Cir. 1964) as supportive of their position. The Court stated in its opinion of defendant's motion for a directed verdict, however, that *Lieberthal* is distinguishable from this case because the amount of interstate activity proven is greater than that alleged in *Lieberthal* and be-

cause the test enunciated in that case was the effect of the activity on interstate commerce.

[8] Additionally, and perhaps more importantly, the jury in this case was specifically instructed that the plaintiffs were required to "prove . . . [f]irst, that the assets acquired by the defendant were acquired from a corporation engaged in interstate commerce." If the jury answers the above question in the affirmative, the jurisdictional issue is concluded, Washington State Bowling Proprietors Association v. Pacific Lanes, Inc., 356 F.2d 371, 380 (9th Cir.), cert. denied, 384 U.S. 963, 86 S.Ct. 1590, 16 L.Ed.2d 674 (1966); Bowl America, Inc. v. Fair Lanes, Inc., 299 F.Supp. 1080, 1090 (D.Md. 1969), except to the extent that this Court must examine whether the jury's conclusion was at all possible based on the evidence. As has been stated, there exists sufficient evidence to sustain such a conclusion. The instant motion cannot, therefore, be granted on this basis.

[9] On the same general issue, defendant argues that, as a matter of law, the jury could not have found that two of the establishments acquired by Brunswick, Fair Lanes and Interstate Lanes, were "engaged in commerce" at the time of the acquisition. This is allegedly so because Brunswick purchased the stock of these two companies after their parent company, American International Bowling Corporation (AIBC), had gone into bankruptcy.

As supportive of this contention, defendant cites Danning v. Brunswick Corporation, 466 F.2d 1010 (9th Cir., 1972), cert. denied, 409 U.S. 1126, 93 S.Ct. 939, 35 L.Ed.2d 257 (1973). *Danning* was a consolidated suit by a trustee in bankruptcy and a shareholder of a competing bowling

center against Brunswick. Plaintiff alleged that Brunswick's assumption of the lease of the debtor violated Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act in that defendants "by their lease, conspired to foreclose acquistion of the [debtor] at the trustee's sale by anyone but Brunswick and enhanced Brunswick's monopoly in the bowling business." 466 F.2d at 1012 (footnote omitted).

In affirming the trial court's grant of summary judgment, the Ninth Circuit Court of Appeals stated:

> Plaintiffs' claims, as reflected in the complaints, are essentially similar; each is vested upon Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act. In substance the trustee and Levy contend that Malouf and Brunswick, by their lease, conspired to foreclose acquisition of the Matador business at the trustee's sale by anyone but Brunswick and enhanced Brunswick's monopoly in the bowling business.
>
> The basic defect in these contentions, briefly stated, lies in the fact that at the time of the sale the trustee had no business to sell. He had not seen fit nor taken the steps necessary to preserve the business as an integral unit, but had allowed the major components to revert to the creditor-owners.

466 F.2d at 1012 (footnotes omitted). Defendant asserts that the same reasoning applies to the instant case. This Court disagrees. The businesses which were sold in the instant case had been preserved as integral units. Mr. Lieblich testified at the trial that he and other bidders at the bankruptcy sale, assuming they had been successful, would simply have "assumed the debt obligations of [the bowling

centers involved] to Brunswick and have met them in the ordinary course of business." [Tr. 878-79]. Thus, it is clear from the testimony that the bidders at the bankruptcy sale in the instant case, unlike those in *Danning,* were purchasing going concerns which were in fact "engaged in commerce."

[10, 11] Defendant's next claim is that plaintiffs introduced no evidence whereby the jury could conclude that it acquired any assets of Belmont Lanes in Pueblo, Colorado or of Dutchess Lanes in Poughkeepsie, New York. Brunswick operated these centers under a lease agreement, defendant contends, and no other property was proven to have changed hands. The instant motion marks the first time that this issue has been raised and it might be plausibly argued that acquisition has been admitted.[1] Furthermore, the jury was instructed that they must find an acquisition in order to find a Section 7 violation; this they did. In this Court's view, that finding is supported by the record.

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[1] Brunswick made the folowing statement regarding Dutchess Lanes at paragraph 23 of its answer:

> . . . defendant entered into possession of the premises of said bowling center pursuant to a lease thereof, and of certain personal property located therein, by the owner of such premises, and at the same time defendant purchased from LEMAR, INC. certain liquor and food supplies and ball boring equipment located on such premises.

Concerning Belmont Lanes, Brunswick stated at paragraph 19 of its answer that it entered into an agreement with the former operator on the condition that "said former operator would turn over to defendant certain other equipment and supplies located in said center." Brunswick also stated in a memorandum dated May 5, 1973 that "Brunswick also bought the assets comprising Belmont Lanes in Pueblo", and that "Brunswick also purchased the assets comprising Dutchess Lanes in Poughkeepsie" (Br. at 10).

An admission by counsel is binding upon his client. *See* Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972); Rhoades, Inc. v. United Air Lines, Inc., 340 F.2d 481, 484 (3d Cir. 1965).

Defendant's final argument on its motion for judgment notwithstanding verdict is that "evidence established as a matter of law that each of the [competing] corporations . . . was a failing company and that therefore any acquisitions of their assets or stock were beyond the reach of Section 7 of the Clayton Act." They argue that, because plaintiff's damage evidence was predicated on the fact that these centers would have gone out of business but for Brunswick's intervention, an admission has been made that the centers were in fact "failing companies". Much more is necessary however, for defendant's neat "Catch-22" proposition to be viable.

[12, 13] One asserting the failing company defense must establish not only that the particular company is in irreversible failure but also that the acquisition in question was the sole alternative available. United States v. Greater Buffalo Press, Inc., 402 U.S. 549, 555, 91 S.Ct. 1692, 29 L.Ed.2d 170 (1971). Whether the companies acquired by Brunswick were in fact failing is somewhat doubtful from the record. Furthermore, there is almost no proof as to the "sole alternative" requirement. A defense is a matter of proof for the defendant.

Brunswick also contends that it was the only bidder prepared to purchase all of the assets of AIBC and that that purchase was, therefore, the sole open alternative in order to save that corporation from failure as a matter of law. There were, however, several other bidders at the sale who were prepared to purchase individual establishments. There is no proof in the record, nor has Brunswick made any argument, as to why individual purchases would not present an additional alternative. Additionally, the jury re-

ceived sufficient instructions on the failing company defense [Tr. 4682-83; 4731-32] and found it inapplicable.

II

[14] Defendant's alternative motion is that a new trial should be granted. Such a motion is directed to the sound discretion of the trial court, Sotell v. Maritime Overseas, Inc., 474 F.2d 794, 796 (2nd Cir. 1973), and should only be granted where the verdict was influenced by partiality or prejudice, or some misconduct or some misconception of the law and the verdict established was therefore a clear instance of wrong decision and a resultant miscarriage of justice. Fireman's Fund Insurance Co. v. Aalco Wrecking Co., Inc., 466 F.2d 179, 187 (8th Cir. 1972); Andrzejczak v. Calarco, 339 F.Supp. 68, 69 (W.D.Pa. 1972).

Several of the arguments marshalled in favor of the motion for a judgment notwithstanding verdict are restated in support of the motion for a new trial, this Court therefore considers its previous remarks sufficient to dispose of them. Included in this category are the following contentions: the Court erred in denying verdicts at the close of plaintiffs' case; the Court erred in denying defendant's motions for directed verdicts at the close of all the evidence; the verdicts are without foundation or support in the evidence; the verdicts are contrary to the manifest weight of the evidence.

[15] Defendant next argues that it was error for this Court to admit evidence illustrating the additional profits which would have been realized by the plaintiffs if the competing centers had not been acquired by Brunswick and had instead gone out of business. Defendant has cited no au-

thority, other than a cross-reference to a prior point, which would render such evidence inadmissible. Plaintiff correctly points out that an estimate of probable profits but for the alleged wrongdoing of a defendant is clearly admissible. William H. Rankin Co. v. Associated Bill Posters of the United States, 42 F.2d 152 (2nd Cir.), cert. denied, 282 U.S. 864, 51 S.Ct. 37, 75 L.Ed. 765 (1930). This being so, defendant's argument as to the admissibility of this evidence is reduced to a combination of a reargument of the viability of the plaintiffs' claims and a questioning of the evidence's weight. The Court has already decided the former and the latter is no ground for a new trial.

[16, 17] Defendant's next argument is that the Court's instruction that two of the acquisitions in question were, as a matter of law, "in a line of commerce" was error. Defendant asserts that such an instruction effectively took the issue of interstate commerce from the jury. Although this Court is convinced of the correctness of these charges, Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc., 356 F.2d 371 (9th Cir.), cert. denied, 384 U.S. 963, 86 S.Ct. 1590, 16 L.Ed.2d 674 (1966); Bowl America, Inc. v. Fair Lanes, Inc., 299 F.Supp. 1080, 1090 (D. Md.1969), it is nevertheless arguable that they implied that the issue of *interstate* commerce was linked to the question of a line of commerce. It is textbook law, however, that a jury charge must be viewed in its entirety. James v. Continental Insurance Co., 424 F.2d 1064 (3d Cir. 1970); Ely v. Reading Co., 424 F.2d 758 (3d Cir. 1970). The jury in this case was specifically instructed as follows:

> Each of these plaintiffs, to be entitled to prevail on its claim under Section 7 of the Clayton Act, must prove each and all of the following facts:

> First, that the assets acquired by the defendant were acquired from a corporation engaged in interstate commerce. . . .

Any possible confusion created by what was left unsaid was therefore eliminated by what was specifically stated.

[18] Defendant further contends that the Court's charges on what the jury might consider in deciding whether competition was lessened were erroneous as a matter of law. Specifically, Brunswick asserts that these charges were erroneous in that they (a) instructed the jury that they could consider the fact that "Brunswick describes itself as 'Number One in Bowling' and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers", (b) instructed the jury that they could conclude that competition had been lessened in the particular areas from the fact that Brunswick acquired more than an insubstantial percentage of the particular market areas involved.

Defendant argues that its corporate size and the fact that it is a manufacturer of bowling supplies are completely irrelevant to the case. This Court disagrees. Corporate size and status as a manufacturer are crucial to the question of whether competition was lessened. Defendant clings to the position that it should be considered as just another competitor in the retail bowling business. The law is to the contrary. Brown Shoe Co. v. United States, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962); Reynolds Metals Co. v. F. T. C., 114 U.S.App.D.C. 2, 309 F.2d 223, 229-30 (1962); Sanitary Milk Producers v. Bergjans Farm Dairy, Inc., 368 F.2d 679 (8th Cir. 1966).

[19, 20] On the second point, it is admittedly true that occupation of a substantial portion of the acquired's market by the acquirer is not a per se antitrust violation. Transamerica Corp. v. Board of Governors, 206 F.2d 163, 170 (3d Cir. 1953), but a reasonable reading of the charge herein examined does not disclose such a suggestion. It is true, on the other hand, that the factors emphasized by the charge, and especially market percentage, are perhaps the most crucial considerations in Section 7 case. Brown Shoe Co. v. United States, *supra;* Sanitary Milk Products v. Bergjans, *supra;* United States v. Atlantic Richfield Co., 297 F.Supp. 1061 (S.D.N.Y.1969), aff'd sub nom., Bartlett v. United States, 401 U.S. 986, 91 S.Ct. 1233, 28 L.Ed.2d 527 (1971). The prerequisites for the granting of a motion for a new trial have not, therefore, been met by this contention.

[21] Defendant's last general objection relates to the Court's instructions as to damages. The initial specific argument, that plaintiffs could have suffered no damages because Brunswick could not, as a matter of law, have lessened competition by merely substituting itself for other bowling establishments, is merely the logical extension of the defendant's prior argument on the issue and has been sufficiently commented upon heretofore.

Defendant also claims that the Court erred in instructing the jury as to the monetary amounts of the damages claimed by the plaintiffs in that doing so had the effect of transforming opinion testimony into fact and directed the jury to find a specific amount.

[22, 23] Initially it should be noted that it is not error for the instructing Court to review the dollar amounts of

the damages proposed by both plaintiff and defendant. Dowell, Inc. v. Jowers, 166 F.2d 214 (5th Cir.), cert. denied, 334 U.S. 832, 68 S.Ct. 1346, 92 L.Ed. 1759 (1948); Cape Cod Food Products v. National Cranberry Association, 119 F. Supp. 900 (D.Mass.1954). Reviewing the dollar amounts proposed by both sides was, of course, an impossible task in this case since defendant produced no damage evidence whatsoever. Defendant complains that the review of dollar amounts precluded the jury from considering several mitigating factors as to damages which were brought out on cross-examination. The jury, however, was repeatedly instructed that they were the sole judges of the facts. It would be most presumptuous of this Court to assume that they ignored anything and the charge, viewed in its entirety, certainly did not instruct them to do so. It was admittedly difficult to maintain proper balance in the damages portion of the charge, but the source of the difficulty is obvious. Counsel choose the manner in which a case is to be tried, the court instructs on the law as it interprets it and the evidence adduced at the trial.

[24] Defendant's final argument is that the Court erred in instructing the jury as follows:

> If you find that Brunswick acquired one of these local bowling centers with such an effect, then you must assess damages with respect to that local market in the same way I have previously described in connection with monopolization and attempted monopolization.

The Court agrees and further finds that the jury's award of damages was excessive as a matter of law and must be either reduced or the matter retried to prevent a miscarriage of justice.

The plaintiff in question is Pueblo Bowl-O-Mat in Pueblo, Colorado. On the theory of reduced profits due to Brunswick's incursion, damages as to Pueblo were claimed by plaintiff as follows:

Additional Annual Bowling Revenues		Net Income Per $1,000 Bowling Revenues		Per Year	Number of Years	Damages
$ 90,000 to $100,000	×	$1,109	=	$ 99,810 to $110,900	8/1/63 to 4/1/73 (9⅔)	$ 964,830 to $1,072,030

These computations, however, were offered to show damages for monopolization and/or attempted monopolization upon which claim the jury found for the defendants. As a matter of law, it was erroneous for the Court to instruct the jury to employ the same damage evidence with respect to the Section 7 claim because Brunswick did not acquire the competing establishment, Belmont Lanes, until April of 1965. Thus there could be no Section 7 damages for the 20 month period between August 1, 1963 and April 1, 1965, and the jury's award of $964,830 (the lower of the amounts claimed by plaintiffs) is erroneous.

Plaintiffs argue that the controlling proposition on this issue is whether there is any basis in the record for the finding which the jury actually made. In the normal situation, this would be a correct statement, but trial courts enjoy wide discretion in this area. Krall v. Crouch Brothers, Inc., 473 F.2d 717, 718-719 (8th Cir. 1973), and it would be naive of this Court to think that the jury, after being erroneously instructed, arrived at the correct Section 7 time period but coincidentally found damages in the exact dollar amount evidenced by the aforementioned incorrect time period. Thus, it is this Court's decision that plaintiffs either submit

to a remittitur on the damages of plaintiff Pueblo Bowl-O-Mat or retry the issue.

The one remaining question is the amount of the remittitur. Here too, quite predictably, there is disagreement. Defendant computes the remittitur as follows:

Jury Verdict Before Trebling		Number of Months 8/1/63 to 4/1/73		Per Month Damages		Number of Erroneous Months	
$964,830	÷	116	=	$8317.50	×	20 (corrected figure)	= $166,350
					×	3 (trebling)	= $499,050

Plaintiff argues that this formula assumes too much. Specifically, they argue that it would be unwarranted for this Court to assume that if the jury had known that they could not assess damages for the period from August 1, 1963 to April 1, 1965, they would still have chosen the lower estimate of damages for the period from April 1, 1965 to April 1, 1973. They argue that the Court should employ the higher estimate for the 96 month period for which damages could correctly have been allotted and compute the remittitur as follows:

Plaintiffs' High Damages Estimate		Number of Months 8/1/63 to 4/1/73		Per Month Damages		Number of Correct Months	
$1,072,030	÷	116	=	$9,241.64	×	96	=

Amount Jury Could HaveFound Based on Evidence	Difference Between What Jury Could Have Found and What They Did Find
$887,197 (corrected figure)	$964,830 — $887,197 = $77,633
	$77,633 × 3 (trebling) = $232,899

To compute the remittitur otherwise, argue plaintiffs, would be an unwarranted attempt to decipher the jury's intent. Further, they cite Gorzalitz v. Olin Mathieson Chem-

ical Corp., 429 F.2d 1033, 1047 (5th Cir. 1970) for the proposition that the Court may not substitute its own judgment for that of the jury. That statement is a correct one but of little assistance on the instant issue since it really begs the question.

The present function of this Court is to exercise its discretion and equitably correct the mistake committed. In its opinion, it would be more of an invasion of the jury's function to say that they would have computed yearly losses differently if they were aware of the correct time period. The final award was, after all, merely a function of what the jury found to be yearly losses times the number of years involved. In view of the foregoing, then, it is this Court's opinion that the amount of the remittitur should be $499,050.00. Pueblo Bowl-O-Mat's award would then be $2,395,440.00. Therefore, unless plaintiff Pueblo Bowl-O-Mat submits to a remittitur of $499,050.00, defendant Brunswick's motion for a new trial as to the damages of that plaintiff will be granted. Defendant's motions in all other respects are hereby denied.

Submit appropriate Orders.

APPENDIX C

Opinion of the U.S. District Court for the District of New Jersey Dated November 15, 1974

Civ. A. No. 595-66.

United States District Court
D. New Jesrey.

Nov. 15, 1974.

As Amended Nov. 25, 1974.

TREADWAY COMPANIES, INC., *et al.*,

Plaintiffs,

—v.—

BRUNSWICK CORPORATION,

Defendant.

Cole, Geaney & Yamner, Paterson, N. J., for plaintiffs; Malcolm A. Hoffmann, Robert C. Agee, Robert W. Biggar, Jr., and Bernard Zucker, New York City, of counsel.

Stryker, Tams & Dill, by William L. Dill, Jr., Newark, N. J., for defendant; Miles G. Seeley, Thomas B. McNeill, and Mayer, Brown & Platt, Chicago, Ill., of counsel.

OPINION AND ORDER

WHIPPLE, Chief Judge.

The parties appear before this Court after having concluded a nine and a half week trial before a jury at which

the defendant Brunswick was found to have violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The jury found no violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. The plaintiffs were awarded damages by the jury in the amount of $2,358,030 before trebling and consented to a remittitur in the amount of $499,050 for the reasons set out in an opinion by this Court filed on September 17, 1973, Treadway Companies, Inc. v. Brunswick Corporation, 364 F.Supp. 316, 324-326 (D.N.J.1973). The relief presently sought by the plaintiffs is for an injunction pursuant to 15 U.S.C. § 16 and Fed.R.Civ.P. 65 ordering the defendant Brunswick to divest itself of Belmont Lanes, Pueblo, Colorado; Interstate Lanes, Ramsey, New Jersey; Fair Lawn Lanes, Fair Lawn, New Jersey; Ten-Pin-on-the-Mall, Paramus, New Jersey; and Lodi Lanes, Lodi, New Jersey.

In considering the propriety of this relief, the Court is mindful that the jury has already found injury and has awarded damages which, prior to Telex v. I. B. M., 367 F.Supp. 258 (N.D.Okl.1973), represented the largest outstanding, privately-litigated recovery under the antitrust laws of the United States. This Court is also reminded by the plaintiffs that, "[d]ivestiture has been called the most important of antitrust remedies. It is simple, relatively easy to administer, and sure. It should always be in the forefront of a court's mind when a violation of § 7 has been found." United States v. E. I. duPont de Nemours & Co., 366 U.S. 316, 330-331, 81 S.Ct. 1243, 1252, 6 L. Ed.2d 318 (1961).

[1] For its part the defendant resists this motion for injunctive relief. It contends that before this drastic remedy may be ordered, the Court must specifically find, pur-

suant to the requirements of Fed.R.Civ.P. 65, in what manner the defendant violated Section 7 of the Clayton Act and whether divestiture is, in fact, a remedy effectively directed toward ameliorating the injury found by the jury to have been suffered by the plaintiffs. The defendant further argues that the factual cause of plaintiffs' damages may not be found by the Court independent of and unassisted by the jury's finding on the record already submitted. At this stage of the proceeding, the Court is reminded by the defendant that it operates under the restraint of an estoppel by verdict wherein the Court's findings must at least be consistent with the jury's verdict if such findings were not analytically contained therein. Dixie Sand and Gravel Corp. v. Holland, 255 F.2d 304 (6th Cir. 1958). As a result the defendant vigorously emphasizes the fact that the jury found no liability on the Sherman Act charge of attempted monopolization. The defendant argues that this finding must necessarily influence the Court in its factual determination concerning the defendant's Clayton Act violation.

Section 7 of the Clayton Act reads:

> No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or *to tend to create a monopoly*. 15 U.S.C. § 18 [emphasis supplied]

Since the jury previously found for the defendant on the Sherman Act charge of attempted monopolization, the defendant reasons that the italicized language above must now be removed from the Court's purview. Therefore, the defendant's violation of Section 7 must fall within the alternative language of the statute and reflect activities on its part which have resulted in a substantial lessening of competition. The defendant closes its argument by entreating the Court, as it makes its findings of fact pursuant to Fed.R.Civ.P. 65, to discover and reveal those specific acts of misconduct by which the defendant produced the substantial lessening of competition required by the statute.

[2-4] Although linguistically interesting and possessed of a certain persuasive allure, I conclude that the defendant's argument is legally deficient. It fails to recognize that the test for attempted monopolization under Section 2 of the Sherman Act involves, among other elements, the finding of a specific intent to monopolize. Times-Picayune Publishing Co. v. United States, 345 U. S. 594, 73 S.Ct. 872, 97 L.Ed. 1277) 1953; Swift and Company v. United States, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518 (1905). No such finding of specific intent, however, is a necessary element for a conviction under the "tendency to create a monopoly" provision of Section 7 of the Clayton Act. As a result, the jury's Sherman Act determination does not preclude this Court from finding that its Clayton Act verdict was based upon a "tendency to create a monopoly." United States v. DuPont de Nemours & Co., et al, 353 U.S. 586, 607, 77 S.Ct. 872, 1 L.Ed.2d 1057 (1957); Crown Zellerbach Corporation v. F.T.C., 296 F.2d 800, 825 (9 Cir. 1961), cert. denied, 370 U.S. 937, 82 S.Ct. 1581, 8 L.Ed.2d 807 (1962). It is also established, ". . . the

legislative history of § 7 indicates clearly that the tests for measuring the legality of any particular economic arrangement under the Clayton Act are to be less stringent than those used in applying the Sherman Act." Brown Shoe Co. v. United States, 370 U.S. 294, 328-329, 82 S.Ct. 1502, 1526, 8 L.Ed.2d 510 (1962). The decision by the jury on defendant's alleged violation of the Sherman Act goes no further than what it appears to be on its facts and thus it bears no logical relationship to the Court's present task of making factual findings on the defendant's violation of Section 7 of the Clayton Act.

In making the present findings this Court places primary reliance on Reynolds Metals Company v. F.T.C., 114 U.S. App.D.C. 2, 309 F.2d 223 (1962) and the authorities cited therein. The *Reynolds* case is analogous to the case at bar. It concerned a vertical merger by Reynolds, the world's largest manufacturer of raw aluminum foil, with Arrow Brands, a converter of raw aluminum foil into decorated forms sold almost exclusively to the florist trade. The Court found:

> Arrow's assimilation into Reynolds' enormous capital structure and resources gave Arrow an immediate advantage over its competitors who were contending for a share of the market for florist foil. The power of the "deep-pocket" or "rich parent" for one of the florist foil suppliers in a competitive group where previously no company was very large and all were relatively small opened the possibility and power to sell at prices approximately cost or below and thus to undercut and ravage the less affluent competition. The Commission is not required to establish that the Reynolds' acquisition of Arrow did in fact have anti-

> competitive consequences. It is sufficient if the Commission shows the acquisition had the capacity or potentiality to lessen competition. That such a potential emerged from the combination of Reynolds and Arrow was enough to bring it within Sec. 7. Reynolds Metal Company v. F.T.C., *supra,* 229-230 (1962).

Brunswick is a manufacturer of bowling equipment and its acquisition of these bowling lanes, which were potential and actual purchasers of its equipment, provided it with the opportunity of acting, like Reynolds, as a rich parent with a deep pocket. In Brunswick's case, however, the opportunity to tap the deep pocket did not prove merely to be a potentiality.

The history of the bowling industry and Brunswick's role in it is particularly illustrative on this point. Prior to Brunswick's entrance into the market of operating bowling centers, control of these businesses rested in the hands of single proprietors and a few small chains. One year after its entrance, however, Brunswick controlled 176 bowling centers in the United States and immediately became the industry's largest single operator controlling 5.5 times more centers than any of its competitors (Pl. Ex. 32)

Its growth in this area, however, did nothing to diminish its prominence as a major manufacturer of bowling equipment and, incident thereto, its position as a major creditor to the bowling centers which purchased its equipment. As a credit-extending parent it was able to subsidize the purchases of its newly-acquired business at the rate of $2,000.00 per lane, (Pl. Exs. 1, 1A, 2) while it placed the plaintiffs on a "cash only" basis although prior to entry in this market it customarily extended credit to these plaintiffs

(Pl.Ex. 35-38; Lieblich Tr. 598-601, 604-609, 617-628). Obviously the defendant utilized its position as a major supplier and creditor not only to nourish its own newly-acquired children but also to deprive its newly-found rivals.

This naturally jealous parent also sought to favor its newly-acquired businesses by endowing them with the allurements of give-away programs and special services as the Learn-to-Bowl series. The object was to attract and increase patronage of these bowling centers by individual bowlers and leagues. In this they were successful and drew patronage away from the plaintiffs. (Lieblich Tr. 290, 293-294, 321, 336-337, 389, 409-411, 873, 878-896, 899-901, 926-930; Kenny Tr. 1110-1111, 1126; Davis Tr. 1804-1812, 1818-1828, 1839-1843, 1869-1870; Mendelson Tr. 1243-1246, 1314, 1343-1346, Pl.Ex. 53). The deep pocket of the rich parent certainly contributed to the expenditures made on these programs.

It is obvious that the plaintiffs have suffered as a result of defendant's entry into the bowling center market. The jury also recognized the effect of this injury when it adopted plaintiffs' Exhibit 53 as its measure of damages on the Section 7 claims. This Court's own observations, coupled to the fact of the jury's own finding of injury on the Section 7 count, make it incumbent on me to fashion an equitable remedy to assure the nonrecurrence of such injury in the future. To act otherwise would have this Court violate the very doctrine of estoppel by verdict so vigorously advocated by the defendant both on oral argument and in its brief.

[5] In fashioning this remedy, I find it necessary to expressly state the factual basis on which I shall make my ruling. Although I have specifically made findings concern-

ing the anti-competitive practices utilized by the defendant in causing the plaintiffs' injury, I also find in the alternative that the factual presence of the defendant in this market is sufficient to prompt the equitable intervention of this Court. In so finding, I adhere to the argument advanced by the plaintiffs that actual anticompetitive effects, let alone the causal mechanisms by which they were induced, are not necessary precedents to finding a violation of Clayton Section 7 nor to ordering equitable relief.

[6, 7] The mere presence of a defendant in the market with the capacity or potentiality to substantially lessen competition is sufficient to trigger a violation of Section 7. Reynolds Metals Co. v. F.T.C., *supra,* at 229-230. In the instant case, however, not only does this defendant possess the *potentiality* to substantially lessen competition (because of its dual capacity as a manufacturer, creditor and supplier of bowling equipment as well as a purchaser of the same) but also the jury has already found the *actuality* of this anti-competitive effect when it assessed its award of damages in favor of the plaintiffs. The very fact of the jury's finding, unless it was so erroneous as to demand a judgment n.o. v. which I have previously denied, is sufficient to support my present decision to order injunctive relief.

The sufficiency of the jury's finding to support an injunctive decree of divestiture does not automatically resolve all the issues presented in the plaintiff's present application. Although it is permissible for divestiture to be ordered in the instant case, the question remains concerning its wisdom. The cases indicate, at times, a judicial reluctance to order so drastic a remedy in a private antitrust action. Schrader v. National Screen Service Corp., 1955 Trade Case, Par. 68,217 (E.D.Pa.1955); and at times

the courts seriously question whether such a right is available to private litigants under the antitrust laws. American Comm'l Barge Line Co. v. Eastern Gas. Assoc., 204 F.Supp. 451 (S.D.Ohio 1962).

[8] This Court's reading of Section 16 of the Clayton Act, however, does not find any congressional reluctance nor prohibition of affording the remedy to a private litigant. The language of the more recent cases in this area also supports this interpretation of the statute. "In the absence of solid precedent or clear legislative history, this court's own research into the availability of divestiture and mandatory injunction to a private plaintiff suing under § 16 has impelled this court to conclude that both such equitable remedies are available to private plaintiffs under § 16." International Telephone & Telegraph Corp. v. General Telephone & Electronics Corp., 351 F.Supp. 1153. 1207 (D.Hawaii, 1972); Burkhead v. Phillips Petroleum Co., 308 F.Supp. 120, 127 (N.D.Cal. 1970). "The statute does not distinguish between types of injunctive relief. Any type would seem to be permissible, when it is appropriate. The . . . nature and extent of the remedy to be decreed . . . is a question for the trial court . . ." Julius M. Ames Co. v. Bostitch, Inc., 240 F.Supp. 521, 526 (S.D. N.Y., 1965).

[9] In ruling upon the appropriateness of the remedy the Court is influenced by a number of factors. Initially, it recognizes that private enforcement of the antitrust laws is encouraged both by Congress and the courts as an effective and efficient means of achieving governmental policy. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-131, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969); Hecht Co. v. Bowles, 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed.

754 (1944). A second but no less central factor is the need to restore competitiveness in the market as well as the actual need for relief by the plaintiffs. "Like restitution it merely deprive the defendant of the gains from his wrongful conduct. It is an equitable remedy designed in the public interest to undo what could have been prevented had the defendants not outdistanced the government in their unlawful project." Schine Chain Theatres, Inc. v. United States, 334 U.S. 110, 128, 68 S.Ct. 947, 957, 92 L.Ed. 1245 (1948). Finally, as was previously observed at the outset of this opinion, it is a remedy which, " . . . is simple, relatively easy to administer, and sure. It should always be in the forefront of a court's mind when a violation of § 7 has been found." United States v. E. I. duPont de Nemours & Co., *supra*.

[10] As applied to the facts in the instant case, it is apparent that the defendant's position in the bowling industry both as a supplier-purchaser and a creditor-borrower has infused it with the capacity to out-distance the efforts of its rivals because of the deep pocket of its manufacturing arm. Whether this deep pocket should or should not be utilized to finance give-aways and other promotional schemes or to subsidize or not to subsidize the purchase of newer and more attractive bowling equipment, it is clear that the opportunity for the abuse of this economic power is ever present. For the Court simply to enjoin these particular methods of doing busines would not prevent the defendant from possibly creating other means and practices by which the same anticompetitive effects could be produced in the market. In fact, it is this very anxiety about the versatility of an integrated giant and the multifarious ways by which it can abuse its econ-

omic power that has led this Court to refrain from basing its divestiture decree on narrow factual issues confined to those particular business practices that it has found to be anti-competitive in effect. The flexibility, afforded by the aggrandizement of economic power effected through the vertical merger in the instant case, is the actual danger that threatens both the bowling industry and these plaintiffs. This danger can effectively be removed only by rescinding the merger.

[11] Because the boundaries of this relief must be limited in extent to those zones of interest and actual harm properly represented by these plaintiffs, I shall order the defendant to divest itself of its bowling operations at Belmont Lanes, Pueblo, Colorado; Interstate Lanes, Ramsey, New Jersey; Fair Lawn Lanes, Fair Lawn, New Jersey; Ten-Pin-on-the-Mall, Paramus, New Jersey, and Lodi Lanes, Lodi, New Jersey.

The plaintiffs are to submit an appropriate order.

Supreme Court, U. S.
FILED
MAY 24 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Volume I.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

**PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,**

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

**PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.**

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Defendant's Notice of Appeal (February 7, 1975) A1572

Court of Appeals Opinion (August 29, 1975) (Printed as Appendix A to Petition for Certiorari and Will Not Be Reprinted in the Appendix to the Briefs)

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RELEVANT DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

6-14-66	Complaint filed.
9- 1-66	Answer and Counterclaim filed.
10-24-68	Notice of motion by Counter-Defendant, Daniel Parke Lieblich for summary judgment against Brunswick Corporation on Second amended third count of the counterclaim, and affidavit of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
10-24-68	Notice of motion by plaintiffs and counter-defendants, Daniel Parke Lieblich for dismissal of counts one and two of defendant's counterclaim, or in the alternative, for summary judgment on counts one and two, and acknowledgment of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
10-24-68	Notice of motion by counter-defendant Reuben Dankoff for dismissal and/or for summary judgment as to second amended third count, first and second counts, and acknowledgment of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
1- 9-69	Notice of motion by defendant, Brunswick Corporation for summary judgment of dismissal, and certificate of service, filed 1-8-69 (ret. 1-27-69) (Brief submitted).
4-17-69	Opinion filed 4-15-69. (Wortendyke) (Motion for dismissal as to second and third counts of amended counterclaim denied).
6- 2-69	Order granting defendant's motion for dismissal of count 1; denying motions of counter-

defendants for dismissal or summary judgment as to second and third counts of amended counterclaim, filed 5-29-69 (Wortendyke) Notice mailed.

6-30-69 Opinion, filed 6-27-69 (Wortendyke) (Denying plaintiffs' motions for partial summary judgment and for vacation of protective order; denying defendant-counter claimants' motion for summary judgment).

7-29-69 Order denying motion of defendant, Brunswick Corporation for summary judgment; denying cross-motion of plaintiffs for partial summary judgment, etc., filed (Wortendyke) Notice mailed.

3-12-70 Trial with Jury before Hon. Reynier J. Wortendyke, Jr., (3-10-70) Trial adjourned to a date to be fixed.

4-23-70 Trial continued: (4-21-70) Hearing on application of Brunswick Corporation to amend answer. Ordered application denied. Hearing on motion of plaintiffs to dismiss Count 2 of Counterclaim, or in the alternative, for a directed verdict. Ordered motion granted. Hearing on motion of Ruben Dankoff and Daniel Lieblich for dismissal of Count 3 of counterclaim. Ordered motion granted, Order to be submitted. Hearing on motion of Brunswick Corporation for a directed verdict as to Count 1 of complaint. Ordered motion denied. Trial adjourned to 4-22-70.

5- 4-70 Trial continued (4-29-70).
Disagreement.

5- 4-70 Written Disagreement, filed 4-29-70.

6- 8-70 Order for judgment of dismissal of the first count, second count and the second amended third count of the counterclaim, without costs, filed 6-5-70 (Wortendyke) Notice mailed.

6-29-70 Order denying defendant's post-trial motions; granted to extent for new trial; denying post-trial motions of plaintiffs filed 6-25-70 (Wortendyke) Notice mailed.

3-15-73 Trial moved before Hon. Lawrence A. Whipple with jury. (3-13-73). Trial adjourned to 3-14-73.

4-26-73 Motion by defendant, Brunswick Corporation, for a directed verdict or, in the alternative, to direct a verdict finding separately the issues raised in each of the Counts I, II and III of the complaint, filed 4-25-73. (No brief submitted).

5- 8-73 Defendant's motion for directed verdict or verdicts at the close of all of the evidence, filed 5-4-73.

5- 9-73 Trial continued: (5-7-73).
Ordered motion of defendant for a directed verdict denied.
Ordered motion of plaintiffs for a directed verdict denied.

5-15-73 Trial continued: (5-11-73).
Verdict: In favor of the plaintiffs, Pueblo Bowl-O-Mat, Holiday Bowl-O-Mat, Paramus Bowl-O-Mat. No cause for action as to plaintiffs, Treadway Companies, Inc.,

Paradise Bowl-O-Mat, Inc., Indianapolis Bowl-O-Mat, Inc.

Hearing on application of plaintiffs for immediate imposition of treble damages. Ordered application granted.

5-15-73 Written verdict, filed 5-11-73.

5-31-73 Judgment for $2,894,490 in favor of plaintiff Pueblo Bowl-O-Mat, Inc.; for $896,400.00 in favor of plaintiff Holiday Bowl-O-Mat, Inc.; for $3,283,200.00 in favor of plaintiff Bowl-O-Mat Paramus Operations, and all against defendant Brunswick Corporation; dismissing certain claims, etc.; jurisdiction retained with respect to equitable relief and costs, filed 5-23-73. (Whipple) Notice mailed.

6-11-73 Defendant's motion for judgment notwithstanding the verdicts or, in the alternative, for a new trial, filed 6-8-73.

9-19-73 Opinion, filed 9-17-73 (Whipple) Motion for new trial as to damages granted unless Pueblo Bowl-O-Mat submits to a remittitur (judgment notwithstanding verdict denied).

10- 5-73 Consent of defendant Pueblo Bowl-O-Mat, Inc. to reduce verdict and judgment, filed 10-1-73.

10- 5-73 Order denying motion of Brunswick Corporation for judgment notwithstanding verdicts; denying motion for new trial, etc.; and reducing judgment on behalf of Pueblo Bowl-O-Mat, Inc., filed 10-1-73. (Whipple) Notice mailed.

10- 5-73 Supersedeas Bond with approval of the court thereon, filed 10-2-73.

10- 5-73 Notice of Appeal by defendant, filed 10-2-73.

11-14-73 Record on Appeal sent to U. S. C. A. (Notice mailed).

1- 8-74 Opinion, filed 1-7-74 (Whipple) (Allowing Attorneys' fees and costs).

4- 2-74 Judgment for $446,977.32 for costs and counsel fees in favor of plaintiffs, Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc. and Bowl-O-Mat Paramus Operations and against defendant Brunswick Corporation, filed 3-15-74. (Whipple) Notice mailed.

5- 3-74 Notice of Appeal by defendant, filed 5-1-74.

6- 3-74 Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

9- 9-74 Opinion from U. S. C. A. dismissing the three appeals, filed.

9-24-74 Supplemental order making judgment entered May 31, 1973 and orders entered October 5, 1973 and April 2, 1974 final; rendering this order nunc pro tunc as to said judgment and orders, etc., filed 9-17-74. (Whipple) Notice mailed.

9-30-74 Supersedeas Bond, filed 9-27-74.

9-30-74 Notice of Appeal by defendant, filed 9-26-74.

10- 3-74 Second Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

10-17-74 Third Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

12-24-74 Fourth Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

1- 9-75 Final Judgment requiring defendant Brunswick Corporation to divest itself of certain bowling centers, denying plaintiffs' application for an injunction prohibiting defendant from building any new bowling centers; granting application of certain plaintiffs for injunction prohibiting defendant from acquiring any existing centers in the Pueblo, Paramus and Poughkeepsie/ Wappingers Falls areas, without costs, filed 1-3-75. (Whipple) Notice mailed.

2-11-75 Notice of Appeal by defendant, filed 2-7-75.

2-13-75 Fifth Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

RELEVANT DOCKET ENTRIES IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Case No. 73-2010.

11-26-73 Copy of Notice of Appeal, rec'd October 9, 1973, filed.
Record and Exhibits, rec'd November 16, 1973, filed.

6-11-74 Argued. Coram: Staley, Gibbons and Weis, Circuit Judges.

8-14-74 Opinion Per Curiam (Staley, *Gibbons* and Weis, Circuit Judges). NOT FOR PUBLICATION, filed (Covers 73-2010, 74-1621 & 74-1622).

9- 5-74 Amended Judgment dismissing the appeals, with taxation of costs to abide the event of any new appeals in this matter, filed. (Covers 73-2010, 74-1621/22).

Case No. 74-2127.

11- 7-74 Copy of Notice of Appeal, rec'd October 2, 1974, filed.

Record, and Exhibits, rec'd May [sic] 16, 1973, filed.

First Supplemental Record, rec'd June 4, 1974, filed.

Second Supplemental Record, rec'd Oct. 4, 1974, filed.

Third Supplemental Record, rec'd Oct. 18, 1974, filed.

11-13-74 Appendix to briefs, previously filed in No. 73-2010, filed (Vols. 1 to 5). (4cc.). (Covers 74-2127 and 74-2128).

11-21-74 Supplemental Appendix, filed. (Covers 74-2127/8).

12-26-74 Fourth Supplemental Record (Nos. 274/278), filed. (Covers 74-2127/8 and 75-1152).

2-15-75 Fifth Supplemental Record (Nos. 279/282), filed. (Covers 74-2127/8 and 75-1152).

2-28-75 Second Supplemental Appendix, filed. (Covers 74-2127/8 and 75-1152).

8-29-75 Opinion of the Court (Staley, *Gibbons* and Weis, C. J.), filed. (Covers 74-2127/8 and 75-1152).

8-29-75 Judgment reversing the judgment of the District Court entered May 31, 1973 and September 24, 1974, which judgment and orders granted damages to the plaintiff-appellees in case No. 74-2127, and the judgment of the District Court entered on January 9, 1975, which judgment granted equitable relief to the plaintiff-appellees in case No. 75-1152; and vacating the order of the District Court entered April 2, 1974, as amended by the Order of the District Court entered September 24, 1974, which orders granted an attorney's fee to the plaintiff-appellants in case No. 74-2128 and remanding the cause to the District Court for further proceedings in accordance with the opinion of this Court, with costs taxed against appellees in cases numbered 74-2127 and 75-1152, filed. (Covers 74-2127/8 & 75-1152).

9-26-75 Order (*Gibbons*, C. J.) staying issuance of the certified judgment in lieu of formal mandate until October 20, 1975, filed. (Covers 74-2127/8 and 75-1152).

10-29-75 Order (*Gibbons*, C. J.) further staying the issuance of the mandate until November 27, 1975, filed. (Covers 74-2127/8 & 75-1152).

12- 8-75 Notice of filing on November 26, 1975 of petition for writ of certiorari, received from Clerk of S. C., filed. (S. C. No. 75-770). (Covers 74-2127/8 & 75-1152).

1- 5-76 Notice of filing on December 24, 1975 of petition for writ of certiorari, rec'd from C. of S. C., filed. (S. C. No. 75-904). (Covers 74-2127/8 & 75-1152).

COMPLAINT.

Plaintiffs, by their attorney, Murray L. Cole, allege:

1. This action is brought under 15 U. S. C. § 15, 1, 2, 18 and 26, including statutes commonly known as the "Clayton Act" and the "Sherman Act", to recover three times the damages resulting from injury to the business and property of the plaintiffs caused by defendant's violations of the antitrust laws, and for injunctive relief against further violations of the Sherman and Clayton Acts by defendant.

2. Plaintiff National Bowl-O-Mat Corporation (hereafter referred to as "Bowl-O-Mat") is a corporation organized under the laws of New Jersey and has its principal place of business in the City of Paterson, County of Passaic, State of New Jersey.

3. Plaintiff Pueblo Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Pueblo, Colorado, and is wholly owned by Bowl-O-Mat.

4. Plaintiff Bowl-O-Mat Paramus Operations (hereafter referred to as "Paramus Bowl-O-Mat") is a corporation organized under the laws of New Jersey, which owns a bowling center in Paramus, New Jersey, and is wholly owned by Bowl-O-Mat.

5. Plaintiff Holiday Bowl-O-Mat, Inc. is a corporation organized under the laws of New York, which owns a bowling center in Wappingers Falls, New York, and is wholly owned by Bowl-O-Mat.

6. Plaintiff Saginaw Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns

a bowling center in Saginaw, Michigan, and is wholly owned by Bowl-O-Mat.

7. Plaintiff Paradise Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Puerto Nuevo, a suburb of San Juan, Puerto Rico, and is wholly owned by Bowl-O-Mat.

8. Plaintiff Muncie Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Muncie, Indiana, and is wholly owned by Bowl-O-Mat.

9. Plaintiff Skore Lanes Bowl-O-Mat, Inc. is a corporation organized under the laws of Michigan, which owns a bowling center in Detroit, Michigan, and is wholly owned by Bowl-O-Mat.

10. Plaintiff Minneapolis Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Minneapolis, Minnesota, and is wholly owned by Bowl-O-Mat.

11. Plaintiff Des Moines Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Des Moines, Iowa, and is wholly owned by Bowl-O-Mat.

12. Plaintiff Indianapolis Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Indianapolis, Indiana, and is wholly owned by Bowl-O-Mat.

13. Defendant Brunswick Corporation (hereafter referred to as "Brunswick") is a corporation organized under the laws of the State of Delaware; it maintains offices and transacts business in the State of New Jersey. The alleged violations hereinafter described have been and are being carried out in part within the State of New Jersey.

14. Definitions

a. A "pinsetter" is a device for positioning the pins for the game of tenpins.

b. A "bowling lane" includes all of the fixed equipment necessary to the game of tenpins except the pinsetters. Fixed equipment includes the wooden cribbing under the lanes, the lane bed, the ball returns, seats, score tables and lockers.

c. A "bowling center" is an establishment which contains multiple bowling lanes, and which may contain billiard tables, a bar, a cocktail lounge, a coffee shop, a restaurant, and a "pro shop" for the sale of bowling balls and other bowling supplies.

d. "Bowling supplies" are balls, pins, ball bags, shoes, socks, shoe bags, and other bowling accessories.

e. A "line" is a complete game of tenpins for one bowler as marked on a score sheet. A line is completed when ten to twenty-two balls are bowled.

f. "League Bowling" is bowling by organized groups, which meet at bowling centers, at regular times, to compete at tenpin bowling.

15. The plaintiffs in this action are located in seven different states and a commonwealth of the United States. Each is wholly owned by plaintiff Bowl-O-Mat, a New Jersey corporation which manages and controls the activities of the subsidiary plaintiff corporations. In the exercise of such management and control Bowl-O-Mat causes its agents regularly to visit each plaintiff corporation. Purchases of supplies for each such plaintiff corporation are regularly made by such corporation from suppliers located in states of the United States different from that in which the plaintiff corporation is located.

There exists a steady and regular flow of equipment, bowling supplies, replacement parts and food and drink products among the states and the commonwealth from such suppliers to such plaintiff corporations. The purchasing and travel activities of the plaintiff corporations constitute a continuous flow of commerce among the several states of the United States and with the Commonwealth of Puerto Rico.

16. The bowling center business consists of: charging a fee for the use of the lanes, with rental generally based on the number of lines bowled; the rental of bowling shoes and balls; it may include, among other things, the operation of a restaurant or coffee shop, the sale of bowling supplies in a "pro shop"; the operation of a cocktail lounge or bar; the maintenance of coin-operated ball cleaning machines and food-vending machines and renting the use of billiard tables.

17. The market from which a bowling center may draw customers is limited by travel time from the customer's home or place of employment to the bowling center. Most league bowling, which is a major source of income for bowling centers, is done at night. Customers generally desire to spend less time traveling to and from bowling centers at night than in the daytime.

18. The market from which Pueblo Bowl-O-Mat draws customers consists of the entire metropolitan area of Pueblo, Colorado.

19. In April 1965, Brunswick acquired and at present owns and operates Belmont Lanes, a bowling center in Pueblo, Colorado, which competes for customers with Pueblo Bowl-O-Mat in the market described in paragraph 18.

20. The market from which Paramus Bowl-O-Mat draws customers consists of Bergen County, New Jersey and an area within a six-mile radius of that center.

21. On March 22, 1965, Brunswick acquired and at present owns and operates "Interstate Lanes," a bowling center in Ramsey, New Jersey, and "Fairlawn Lanes," a bowling center in Fairlawn, New Jersey, which compete for customers with Paramus Bowl-O-Mat in the market described in paragraph 20.

22. The market from which Holiday Bowl-O-Mat draws customers is Wappingers Falls, New York, Poughkeepsie, New York, and communities situated within ten to twenty miles of Wappingers Falls.

23. Sometime in 1965, the exact date being unknown to plaintiffs, Brunswick acquired and at present owns and operates "Dutchess Recreation," a bowling center in Poughkeepsie, New York, which competes for customers with Holiday Bowl-O-Mat in Wappingers Falls, New York, in the market described in paragraph 22.

24. The market from which Saginaw Bowl-O-Mat draws customers consists of Saginaw County, Michigan.

25. The market from which Paradise Bowl-O-Mat draws customers consists of the entire metropolitan area of San Juan, Puerto Rico, extending in a radius at least ten miles from San Juan.

26. The market from which Muncie Bowl-O-Mat draws customers consists of Delaware County, Indiana.

27. The market from which Skore Lanes Bowl-O-Mat draws customers consists of Taylor Township, Michigan, and the surrounding area within a radius of approximately five miles of the township.

28. The market from which Minneapolis Bowl-O-Mat draws customers consists of an area within a radius of approximately eight miles of the bowling center.

29. The market from which Des Moines Bowl-O-Mat draws customers consists of the entire city of Des Moines, Iowa.

30. The market from which Indianapolis Bowl-O-Mat draws customers consists of an area within a radius of approximately eight miles of the bowling center.

31. Bowl-O-Mat formerly owned a bowling center, Ft. Lauderdale Bowl-O-Mat, in Ft. Lauderdale, Florida. This bowling center is now operated by Brunswick. The market from which this bowling center draws customers consists of the entire metropolitan area of Ft. Lauderdale, Florida.

32. At all times relevant hereto, Brunswick was and still is engaged in the business of manufacturing in Ontario, Canada, Michigan, Virginia and other states and the business of selling, installing and servicing automatic pinsetters and bowling lanes from the states of manufacture of such products to all of the states of the United States and the Commonwealth of Puerto Rico. Brunswick sells a complete line of bowling supplies, most of which is manufactured by Brunswick, as well as equipment for the maintenance and furnishing of bowling centers. Brunswick, in addition to the foregoing, at all times relevant hereto was and is engaged in the business of manufacturing billiard tables, balls, cues and other billiard supplies in Canada and the United States and selling such products from the place of manufacture to customers located in all of the states of the United States and the Commonwealth of Puerto Rico.

33. Brunswick is the largest manufacturer in the world of bowling supplies, billiard tables and billiard supplies. Brunswick manufactures almost fifty percent of the automatic pinsetters produced and sold in the United States. American Machine and Foundry, a competitor, manufactures almost fifty percent of the automatic pinsetters produced in the United States.

34. At all times relevant hereto Brunswick was and still is engaged in the business of financing the equipping of bowling centers, including the purchase of pinsetters and lanes, in interstate commerce among the states of the United States and the Commonwealth of Puerto Rico.

35. Brunswick is the fourth largest finance company in the United States.

36. Beginning at a time unknown to plaintiffs, but at least as early as April 21, 1965, Brunswick entered into the business of owning, operating and supplying its own bowling centers in the different states of the United States and the Commonwealth of Puerto Rico.

37. Brunswick is the largest operator of bowling centers in the United States.

38. As of December 31, 1965, Brunswick operated one hundred thirty-four bowling centers located in at least twenty-nine states of the United States and the Commonwealth of Puerto Rico, and at the time of the filing of this complaint has acquired and operates other bowling centers, the exact number of which is not known to plaintiffs.

As and for a First Claim.

39. Brunswick has entered into "Fair-Trade" contracts with bowling centers owned and operated by Bowl-O-Mat in New Jersey and Colorado.

Such contracts establish and maintain the minimum resale price of bowling supplies, including bowling balls.

40. Bowling supplies covered by the aforesaid "Fair Trade" contracts are sold by Brunswick and shipped from plants in Michigan and Canada to Bowl-O-Mat owned centers in New Jersey and Colorado.

41. Beginning at a time not known to plaintiffs and continuing to the date of filing of this complaint, in the markets described in paragraphs 18 and 20, bowling centers owned and operated by Brunswick have advertised and sold bowling supplies, sold to said centers by Brunswick, in competition with Paramus Bowl-O-Mat, Paramus, New Jersey, and Pueblo Bowl-O-Mat, Pueblo, Colorado, respectively.

42. The "Fair Trade" contracts described in paragraph 39 are contracts between competitors to establish and maintain resale prices and hence constitute contracts in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act.

As and for a Second Claim.

43. In June 1964, each of the Bowl-O-Mat bowling centers described in paragraphs 4, 6, 7, 8, 9, 10, 11 and 12 was indebted to Brunswick for pinsetters and lanes sold to it by Brunswick.

44. Because of poor business conditions in the bowling industry which existed in 1964 and persist at the date of the filing of this complaint, most bowling centers, including the Bowl-O-Mat bowling centers referred to in paragraph 43 have had great difficulty in meeting payments to Brunswick under the terms of the original finance agreements.

45. In June 1964, Bowl-O-Mat negotiated for extensions of dates and reductions in amounts of payments of its indebtedness to Brunswick for several of Bowl-O-Mat's bowling centers then indebted to Brunswick, including the Bowl-O-Mat bowling centers referred to in paragraph 43. Officers of Brunswick demanded as a condition for the extensions an additional interest charge at the rate of four and one-half percent per year for the duration of the debts and the guarantee of Bowl-O-Mat as the parent of the debtors. Bowl-O-Mat acceded to these conditions only on condition that all customers indebted to Brunswick would be treated identically by Brunswick, and on Brunswick's assurance that all finance agreements would be enforced to the letter against all debtors of Brunswick.

46. Beginning at a time unknown to plaintiffs, but before the mentioned agreement was made, and continuing to March 28, 1966, Brunswick systematically discriminated against the Bowl-O-Mat bowling centers referred to in paragraph 43 by granting forebearances of debt or discriminatory favorable credit terms to bowling centers indebted to Brunswick and engaged in competition with the Bowl-O-Mat bowling centers above-named and refusing to grant like forebearances and like credit terms to the Bowl-O-Mat centers.

47. In the bowling markets referred to in paragraph 43, above, there existed two or more bowling centers purchasing automatic pinsetting equipment from Brunswick including bowling centers owned by Bowl-O-Mat. At all times mentioned herein, the demand for bowling centers was insufficient to maintain two or more centers at profit-making levels. In such markets, Brunswick supported certain favored bowling centers through discriminatory forebearance against payment on large indebtedness or by extending to such favored bowling centers favorable credit

terms. Without such support by Brunswick, such favored bowling centers would have failed. Brunswick extended such support in order to injure the competition of bowling centers owned by Bowl-O-Mat. Brunswick planned to cause Bowl-O-Mat owned bowling centers to default on their obligations to Brunswick, as part of a plan or purpose to assume the operation of such defaulted bowling centers, thereby monopolizing markets in which such Bowl-O-Mat centers were found.

48. In 1964, Bowl-O-Mat resolved to sell its Ft. Lauderdale Bowl-O-Mat bowling center in Ft. Lauderdale, Florida due to losses sustained by reason of the competition of Imperial Bowl, a bowling center located in Dania, Florida, which had been granted more favorable treatment on its debt owing to Brunswick than had been made available by Brunswick to Ft. Lauderdale Bowl-O-Mat.

49. Brunswick had sold automatic pinsetting equipment and bowling lanes to Ft. Lauderdale Bowl-O-Mat at a price of approximately $600,000 pursuant to a conditional sales agreement. That agreement required the consent in writing of Brunswick for any sale or transfer of the assets of Ft. Lauderdale Bowl-O-Mat to third persons. On November 27, 1964, just three days before an agreed-upon sale of Ft. Lauderdale's assets was to have been consummated, Brunswick, although requested to do so pursuant to the terms of the agreement, unreasonably withheld its consent to a sale to a responsible third party.

50. As a result of Brunswick disapproval of the sale of the Ft. Lauderdale Bowl-O-Mat, Bowl-O-Mat abandoned the property to its landlord. Soon thereafter, Brunswick acquired the bowling center from said landlord and at the time of filing of this complaint, Brunswick owns and operates the center. Within a few weeks after the acquisi-

tion of Ft. Lauderdale Bowl-O-Mat, Brunswick acquired Imperial Bowl in Dania, Florida, and owns and operates the same at the time of filing of this complaint.

51. The purpose and intent of Brunswick's unreasonable refusal to approve the proposed sale of Ft. Lauderdale Bowl-O-Mat was to cause Ft. Lauderdale Bowl-O-Mat to cease doing business, and to enable Brunswick to acquire the bowling center and thereby to monopolize the market in the Ft. Lauderdale area.

52. Brunswick charges low rentals and offers many inducements to bowlers which other operators of bowling centers, who lack the large financial resources of Brunswick, cannot afford to charge or offer for as long a period of time as Brunswick can. Brunswick does so with the purpose and effect of weakening and excluding competition in the markets in which it operates bowling centers.

53. Brunswick absorbs losses in its operation of bowling centers which could not be absorbed by operators who lack the large financial resources of Brunswick, and does not close such centers, with the purpose and effect of weakening and excluding competition in the markets in which it operates bowling centers.

54. Because of its integrated manufacturing and bowling center operating functions, Brunswick is able to and does install the most modern equipment at its bowling centers, including Brunswick "Model A-2" (hereinafter called "A-2") automatic pinsetters, which competitors of Brunswick bowling centers are, for the most part, unable to afford.

55. A-2's are more efficient than other automatic pinsetters, and reduce the time necessary to complete a game of tenpins. As a result, bowling centers equipped with

A-2's attract more bowlers than bowling centers without A-2's.

56. Brunswick has installed A-2's at its bowling center in Fairlawn, New Jersey.

57. Brunswick has announced its intention to install A-2's at its bowling centers in Pueblo, Colorado and Poughkeepsie, New York.

58. The bowling centers owned by plaintiffs Paramus Bowl-O-Mat, Pueblo Bowl-O-Mat, and Holiday Bowl-O-Mat, respectively, are not equipped with A-2's, and as a result, Paramus Bowl-O-Mat has lost, and Holiday Bowl-O-Mat and Pueblo Bowl-O-Mat will lose business to the Brunswick centers described in paragraphs 56 and 57 above.

59. Because Brunswick has been a creditor of Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat, it was able to obtain confidential information through exercise of its contract rights to inspect its debtors' books and to use such information in order to compete as an operator of bowling centers with plaintiffs Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat.

60. Because bowling centers owned and operated by Brunswick are indebted to Brunswick for their lanes and pinsetters, those bowling centers can and do obtain forgiveness, refinancing and forebearances of debt from Brunswick, important commercial advantages unavailable to competitors of those centers.

61. Repeat and reallege the allegations contained in paragraphs 39, 40 and 41.

62. As a result of the above-mentioned acts and practices of Brunswick, Brunswick has achieved, maintains and

exercises power to fix and control prices charged for the use of bowling lanes in each of the markets or parts of commerce described in paragraphs 18, 20, 22 and 31 above, and has achieved, maintains and exercises the power and ability to exclude competitors from said markets or parts of commerce in unlawful monopolization of said markets in violation of § 2 of the Sherman Act.

63. By means of the acts and practices of Brunswick set forth in paragraphs 39, 40, 41, 46, 47, 49, 50, 52, 53, 54, 56, 57, and 59 above, Brunswick has attempted to monopolize each of the markets or parts of commerce described in paragraphs 24 through 30 in violations of § 2 of the Sherman Act.

As and for a Third Claim.

64. Repeat and reallege the allegations contained in paragraphs 52 through 59.

65. Belmont Lanes is a bowling center located in Pueblo, Colorado, as alleged in paragraph 19 above, and was a part of the assets of National Bowlers Corporation, a corporation engaged in interstate commerce. In April 1965, Brunswick acquired all the assets of Belmont Lanes.

66. Interstate Lanes and Fairlawn Lanes are bowling centers located in Ramsey, New Jersey and Fairlawn, New Jersey, as alleged in paragraph 21 above, and constituted part of the assets of the American International Bowling Corporation, a corporation engaged in interstate commerce. On March 22, 1965, Brunswick acquired the assets of Interstate Lanes and Fairlawn Lanes.

67. "Dutchess Recreation," a bowling center in Poughkeepsie, New York, as alleged in paragraph 23 above, was a part of the assets of Lence Lanes Corporation, a corporation engaged in interstate commerce. Sometime during 1965, Brunswick acquired all the assets of Dutchess Recreation.

68. The effects of Brunswick's acquisitions of the above-named bowling centers is and has been substantially to lessen competition or tend to create a monopoly in the markets and sections of the country described in paragraphs 18, 20 and 22 above, all in violation of Section 7 of the Clayton Act.

Damages.

69. As the proximate result of the aforesaid acts and practices of Brunswick, plaintiffs have been injured in their business and property, among other ways, as follows:

(a) Plaintiffs have suffered a loss in profit in the resale of bowling supplies sold to them by Brunswick under fair trade contracts.

(b) Plaintiffs have suffered loss of business and the expectable profits of businesses to Brunswick-owned bowling centers and to other competitors of Bowl-O-Mat as a result of Brunswick's monopolistic practices.

(c) Bowl-O-Mat has lost its entire investment in Ft. Lauderdale Bowl-O-Mat as a result of Brunswick's monopolistic practices.

(d) Plaintiffs have incurred arbitrary and unreasonable interest rates on debts owed to Brunswick and have been compelled to accept terms of financing less favorable than afforded Bowl-O-Mat's competitors by Brunswick, suffering a loss of capital and of rental for the use of lanes because of high prices necessarily charged in order to pay for the discriminatorily high

interest rates and unfavorable credit terms afforded Bowl-O-Mat.

70. Plaintiffs are threatened with further loss and damage as a proximate result of Brunswick's continuing violations of the antitrust laws, and have no adequate remedy at law.

71. Plaintiffs have been injured in their business and property by the violations of the antitrust laws engaged in by defendant. The full extent of damages suffered by plaintiffs as a result of defendant's violations of the antitrust laws is presently unknown to plaintiffs.

Plaintiffs request a trial at which may be determined, along with all other proper measures of damages: the reasonably expectable profits to be made from the operation of their bowling centers at Paramus, New Jersey, Wappingers Falls, New York, Pueblo, Colorado, San Juan, Puerto Rico, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis, Minnesota, Des Moines, Iowa and Indianapolis, Indiana; the value of Ft. Lauderdale Bowl-O-Mat; and the reasonably expectable profits which would be made from the operation of Ft. Lauderdale Bowl-O-Mat; the reasonably expectable profits to be made from the sale of bowling supplies free from fair traded prices; the cost of excessive interest rates and payment terms.

72. During the pendency of this action, further damages will accrue to plaintiffs as a result of the wrongful conduct of defendants, as herein detailed, and additional injuries not yet known to plaintiffs may have been incurred at the time of this complaint, and plaintiffs ask leave of the Court to amend its complaint at the trial hereof to the extent necessary to show such additional damages accruing prior to the close of trial of this action.

WHEREFORE, the plaintiffs pray:

For relief under the first claim:

a. That the Court adjudge and decree that defendant has entered into "Fair Trade" contracts in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act, that the aforesaid contracts are illegal, and that said contracts be ordered to be cancelled and terminated.

b. That the Court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from enforcing similar contracts in unreasonable restraint of trade in the states of New Jersey and Colorado.

c. That the plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

d. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action.

For relief under the second claim:

a. That the Court adjudge and decree that defendant has attempted to monopolize and has monopolized the bowling center business, in the particular markets as defined by this complaint and constituting parts of the trade and commerce among the several states in violation of Section 2 of the Sherman Act.

b. That the Court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from continuing to monopolize and from attempting to monopolize the particular markets as defined by this complaint and constituting part of the trade and commerce among the several states in the states of New York, New Jersey, Colorado, Michigan, Florida, Indiana, Minnesota, Iowa and the Commonwealth of Puerto Rico as hereinbefore described and from acquiring bowling centers which are engaged in competition with plaintiff in the above-described markets in Paramus, New Jersey, Poughkeepsie, New York, San Juan, Puerto Rico, Pueblo, Colorado, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis Minnesota, Des Moines, Iowa and Indianapolis, Indiana.

c. That the Court order that defendant be required to divest itself of "Belmont Lanes," Pueblo, Colorado, "Interstate Lanes," Ramsey, New Jersey, "Fairlawn Lanes," Fairlawn, New Jersey and "Dutchess Recreation" in Poughkeepsie, New York, as soon after the final decision in this Court is entered as this Court deems reasonable.

d. That the plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

e. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action.

For relief under the third claim:

a. That the Court adjudge and decree that defendant has acquired part of the assets of corporations engaged in interstate commerce and that the effect of such acquisitions is substantially to lessen competition and tends to create a monopoly in certain sections of the country, in violation of Section 7 of the Clayton Act.

b. That the court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from acquiring bowling centers which are engaged in competition with plaintiffs in the above-described markets in Paramus, New Jersey, Poughkeepsie, New York, San Juan, Puerto Rico, Pueblo, Colorado, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis, Minnesota, Des Moines, Iowa and Indianapolis, Indiana.

c. That the Court order that defendant be required to divest itself of "Belmont Lanes," Pueblo, Colorado, "Interstate Lanes," Ramsey, New Jersey, "Fairlawn Lanes," Fairlawn, New Jersey and "Dutchess Recreation" in Poughkeepsie, New York, as soon after the final decision in this Court is entered as this Court deems reasonable.

d. That plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

e. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable

attorney's fees and all costs and disbursements of this action.

Dated: Paterson, New Jersey

June 13, 1966

LIEBLICH & COLE,
By MURRAY L. COLE,
Murray L. Cole,
152 Market Street,
Paterson, New Jersey

Attorney for Plaintiffs,
National Bowl-O-Mat Corporation, Pueblo Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations, Holiday Bowl-O-Mat, Inc., Saginaw Bowl-O-Mat, Inc., Paradise Bowl-O-Mat, Inc., Muncie Bowl-O-Mat, Inc., Skore Lanes Bowl-O-Mat, Inc., Minneapolis Bowl-O-Mat, Inc., Des Moines Bowl-O-Mat, Inc., and Indianapolis Bowl-O-Mat, Inc.

MALCOLM A. HOFFMANN,
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New York, N. Y. 10017

Of Counsel to Plaintiffs.

ANSWER AND COUNTERCLAIM.

Defendant, Brunswick Corporation, a corporation of the State of Delaware, having its principal office at 69 West Washington Street, Chicago, Illinois, answering the Complaint filed herein, says:

1. Defendant admits that the plaintiffs seek to maintain this action under the various statutes cited in paragraph 1 of the Complaint, but denies that the plaintiffs have alleged or that they have any right to relief against the defendant under said statutes or any of them.

2-12, Inclusive. On information and belief, defendant admits the allegations of paragraphs 2-12, inclusive, of the Complaint.

13. Defendant admits the allegations in the first sentence of paragraph 13 of the Complaint, but denies that it has carried out or is carrying out the alleged violations referred to in the second sentence thereof, or any part thereof, within the State of New Jersey or elsewhere.

14. Defendant accepts for the purposes of this case the definitions alleged in paragraph 14 of the Complaint, except that it alleges that a "line" of tenpins is completed when 11 to 21 balls have been bowled and that the term "league bowling" commonly is applied only to organized groups which bowl at specified intervals pursuant to seasonal contracts entered into between such groups and the operators of bowling centers.

15. Answering paragraph 15 of the Complaint, defendant admits on information and belief the allegations in the first sentence thereof and, further answering, alleges that it has no knowledge or information sufficient to form a belief as to whether plaintiff NATIONAL BOWL-O-MAT CORPORATION causes its agents regularly to visit the other

plaintiffs. It admits that there is a regular flow of bowling equipment, bowling supplies, replacement parts and food and drink products among the several states and the Commonwealth of Puerto Rico from suppliers thereof to operators of bowling centers and that from time to time the plaintiffs named in paragraphs 3-12, inclusive, of the Complaint have purchased certain of such items from defendant, but it is without knowledge or information sufficient to form a belief as to the nature and extent of any purchasing by said plaintiffs from suppliers other than defendant.

16. Defendant admits that the allegations of paragraph 16 of the Complaint constitute a general description of the bowling center business, but allege that such business does not always include all of the activities alleged therein and may include activities not alleged therein.

17. Answering paragraph 17 of the Complaint, defendant admits that travel time from the customer's home or place of employment to the bowling center is one of the factors which determine the market from which a bowling center may draw customers, but denies it is the only factor therein and alleges that among additional factors which may determine such market are the size, appointments and manner of operation of the bowling center, the character of the community in which it is located and the location, size, appointments and manner of operation of other bowling centers so situated as to offer alternative bowling facilities to substantial numbers of possible or potential customers and that the effective market area of a bowling center may change from time to time in response to changes in one or more of such factors. Defendant admits that league bowling is a major source of income for bowling centers and that, in general, much league bowling is done at night, but alleges that there is significant variation

between bowling centers with respect to these matters. Defendant has no knowledge or information sufficient to form a belief as to whether customers of bowling centers generally desire to spend less time traveling to and from bowling centers at night than in the daytime.

18. Defendant denies the allegations of paragraph 18 of the Complaint.

19. Answering paragraph 19 of the Complaint, defendant denies that it acquired, or that it owns, BELMONT LANES, a bowling center in Pueblo, Colorado, but admits that it operates such bowling center and owns certain equipment and supplies used in said operation. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to National Bowlers Corporation, a former operator of such bowling center, pursuant to conditional sale agreements between defendant and said former operator which provided that the purchase price of such equipment was to be paid in installments over a period of years and further provided that in the event of default in the payment of said installments defendant would have the right to repossess same, among other rights; that on March 2, 1965, defendant entered into an agreement with National Bowlers Corporation that by reason of the latter's defaults in making payments under such conditional sale agreements defendant would repossess said equipment and said former operator would turn over to defendant certain other equipment and supplies located in said center; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults was to operate its equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business to a responsible operator on reasonable terms and that, accordingly, defendant

entered into possession of the premises of said bowling center pursuant to a lease entered into on April 19, 1965 between it and the owner of such premises. Defendant denies that said BELMONT LANES competes for customers to any substantial extent with plaintiff PUEBLO BOWL-O-MAT.

20. Defendant denies the allegation of paragraph 20 of the Complaint.

21. Answering paragraph 21 of the Complaint, defendant admits that it acquired and owns the stock of two corporations which operate, respectively, INTERSTATE LANES, a bowling center in Ramsey, New Jersey, and FAIRLAWN LANES, a bowling center in Fairlawn, New Jersey, and otherwise denies the allegations of said paragraph. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to said two corporations pursuant to conditional sale agreements between defendant and each of said two corporations which provided that the purchase price of such equipment was to be paid in installments over a period of years, and further provided that, in the event of default in the payment of said installments, defendant would have the right to repossess same, among other rights; that at the time of such sales one such corporation was a wholly-owned subsidiary of AMERICAN INTERNATIONAL BOWLING CORPORATION and the other such corporation subsequently became a subsidiary of AMERICAN INTERNATIONAL BOWLING CORPORATION; that said AMERICAN INTERNATIONAL BOWLING CORPORATION guaranteed payment on said conditional sale agreements; that prior to March 26, 1965, said AMERICAN INTERNATIONAL BOWLING CORPORATION was adjudged a bankrupt and each of said two subsidiary corporations which operated the said bowling centers was a failing corporation, was insolvent and had defaulted in the making of payments due under its conditional sale agreements with defendant; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of the foregoing defaults was to operate the equipment sold under said conditional sale agreements in place until such time as its equipment and its operation of each of such bowling centers could be sold as a going business at a fair price to a responsible operator and that, accordingly, on March 26, 1965, defendant purchased for cash, at public sale held at the District Court of the District of New Jersey, from the Trustee in Bankruptcy for said AMERICAN INTERNATIONAL BOWLING CORPORATION, all of the capital stock of said two operating corporations.

22. Defendant denies the allegations of paragraph 22 of the Complaint.

23. Answering paragraph 23 of the Complaint, defendant denies that it acquired or that it owns DUTCHESS RECREATION, a bowling center in Poughkeepsie, New York, but admits that it operates a bowling center in that city known as DUTCHESS LANES and that it owns certain equipment and supplies used in the operation thereof. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to LENCE POUGHKEEPSIE LANES, INC., a former operator of said bowling center, under conditional sale agreements which called for payment of the purchase price over a period of years and further provided that, in the event of default in the payment of such installments, defendant would have the right to repossess such pinsetters, lanes and equipment, among other rights; that LENCE POUGHKEEPSIE LANES, INC. defaulted in the making of such payments and that de-

fendant, pursuant to its rights under said conditional sale agreements, repossessed such pinsetters, lanes and equipment on or about April 5, 1963; that on or about May 13, 1963, defendant resold such equipment to LEMAR, INC., a corporation formed by the landlord of such premises, for a purchase price which subsequently was secured by a chattel mortgage; that said LEMAR, INC. defaulted in the payment of such purchase price and that on or about December 10, 1965, defendant repossessed such equipment again pursuant to the terms of said chattel mortgage; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of the losses which it suffered by reason of such defaults was to operate its pinsetters, lanes and equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that accordingly defendant entered into possession of the premises of said bowling center pursuant to a lease thereof, and of certain personal property located therein, by the owner of such premises, and at the same time defendant purchased from LEMAR, INC. certain liquor and food supplies and ball boring equipment located on such premises. Defendant denies that DUTCHESS LANES competes for customers to any substantial extent with plaintiff HOLIDAY BOWL-O-MAT.

24 through 30, Inclusive. Defendant has no knowledge sufficient to form a belief as to whether the respective markets from which the plaintiffs' bowling centers named in paragraphs 24 through 30, inclusive, of the Complaint draw customers, are in fact the areas alleged in said paragraphs, and defendant alleges that in any event it does not operate any bowling center which competes for customers with any of such plaintiffs' bowling centers.

31. Answering paragraph 31 of the Complaint, defendant has no knowledge or information sufficient to form a belief as to whether plaintiff NATIONAL BOWL-O-MAT CORPORATION formerly owned the bowling center known as FORT LAUDERDALE BOWL-O-MAT in Fort Lauderdale, Florida, and alleges that the former purported operator of such bowling center was a corporation known as FORT LAUDERDALE BOWL-O-MAT, INC. It admits that such bowling center is now operated by defendant under the name of LAUDERDALE LANES. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to an operator of said bowling center which preceded FORT LAUDERDALE BOWL-O-MAT, INC., pursuant to conditional sale agreements between defendant and said operator which provided that the purchase price of such equipment was to be paid in installments over a period of years and further provided that in the event of default in the payment of said installments defendant would have the right to repossess same, among other rights; that subsequently FORT LAUDERDALE BOWL-O-MAT, INC., as the purported successor operator of said bowling center, assumed the obligations of the purchaser under said conditional sale agreements, as then modified by certain extension agreements; that said FORT LAUDERDALE BOWL-O-MAT, INC. defaulted in the making of said payments; that from early in 1964 until October of that year, defendant attempted to negotiate with NATIONAL BOWL-O-MAT CORPORATION a rescheduling of the indebtedness of FORT LAUDERDALE BOWL-O-MAT, INC. under which defendant would receive some payment on the amounts due it, but that such negotiations fell through and in October, 1964, defendant concluded that it would have to take legal action to repossess its equipment and so advised NATIONAL BOWL-O-MAT CORPORATION; that on or about November 6, 1964,

NATIONAL BOWL-O-MAT CORPORATION advised defendant that it had entered into an agreement to sell the Fort Lauderdale center to a third party; that between November 6, 1964 and January 15, 1965, defendant agreed in principle to several proposals under which it would consent to a transfer of title to said equipment to the proposed purchaser and actually signed a transfer of equity documents with respect to the last of such proposals and placed them in the hands of attorneys for both NATIONAL BOWL-O-MAT CORPORATION and the proposed purchaser, but that on January 19, 1965, the proposed purchaser informed the defendant that he was no longer interested in purchasing the center because the landlord of the premises was on the point of evicting FORT LAUDERDALE BOWL-O-MAT, INC. for non-payment of rent; that shortly thereafter FORT LAUDERDALE BOWL-O-MAT, INC. vacated the premises as the result, defendant is informed and believes, of having been evicted, and abandoned therein the pinsetters, lanes and other equipment purchased from defendant; that defendant, pursuant to its rights under its conditional sale agreements, subsequently repossessed such equipment; that defendant thereupon determined that its only reasonable prospect of recovering all or any substantial part of the losses which it sustained by reason of such default was to operate such pinsetters, lanes and equipment in place until such time as its equipment and the operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that, accordingly, defendant entered into possession of the premises pursuant to a lease to it from the owner thereof. Defendant denies that the market from which such bowling center draws customers consists of the entire metropolitan area of Fort Lauderdale, Florida.

32. Defendant admits the allegations of paragraph 32 of the Complaint, except it denies that it was or is manufacturing in Canada, or selling, installing or servicing, in the United States or Puerto Rico, pinsetters or bowling lanes manufactured in Canada.

33. Defendant has no knowledge or information sufficient to form a belief as to whether it is the largest manufacturer in the world of bowling supplies, billiard tables and billiard supplies, or as to whether it manufactures almost 50% of the automatic pin positioning machines produced and sold in the United States, or as to whether American Machine & Foundry manufactures almost 50% thereof, but defendant admits that it is one of the largest manufacturers of such items and that American Machine & Foundry is its largest competitor therein.

34. Defendant denies that it was or that it is engaged in the business of financing the equipping of bowling centers, including the purchase of pinsetters and lanes, as alleged in paragraph 34 of the Complaint, but admits that in connection with and in furtherance of its business of manufacturing and selling pinsetters, bowling lanes and allied equipment it has sold large amounts thereof on installment payment terms under conditional sale agreements or chattel mortgages entered into between it and the purchasers thereof.

35. Defendant denies that it is a finance company as alleged in paragraph 35 of the Complaint.

36. Answering paragraph 36 of the Complaint, defendant admits that to a limited extent it has entered into the business of leasing and operating bowling centers containing repossessed equipment sold by it to previous operators of such centers, as a means of attempting to offset losses which it has suffered by reason of the defaults of

such purchasers under conditional sale agreements or chattel mortgages, with the intention at all times that when possible it would sell its equipment and its operation of each such center as a going business to a responsible purchaser.

37. On information and belief, defendant admits the allegations of paragraph 37 of the Complaint.

38. Defendant admits the allegations of paragraph 38 of the Complaint, except that as of December 31, 1965 the number of bowling centers which it was operating, as aforesaid, was 131, located in 33 states but not in Puerto Rico.

39. Answering paragraph 39 of the Complaint, defendant admits that it has entered into "Fair Trade" contracts with the plaintiffs PUEBLO BOWL-O-MAT, INC. and BOWL-O-MAT PARAMUS OPERATIONS, and admits that such contracts established minimum resale prices for certain specified trademarked bowling supplies, comprising bowling balls, bags and shoes.

40. Answering paragraph 40 of the Complaint, defendant admits that it has sold bowling supplies covered by "Fair Trade" contracts to Bowl-O-Mat owned centers in New Jersey and Colorado, but further alleges that such sales have been *de minimis* since prior to the respective dates on which defendant commenced the operation of its bowling centers in Pueblo, Colorado and in Ramsey and Fairlawn, New Jersey, and that the plaintiffs' PUEBLO BOWL-O-MAT, INC. and BOWL-O-MAT PARAMUS OPERATIONS virtually ceased to be customers of or dealers for defendant after said dates.

41. Answering paragraph 41 of the Complaint, defendant admits that bowling centers operated by defendant have sold bowling supplies certain of which have been manufactured by defendant, but denies that they have done so in substantial competition with either PARAMUS BOWL-O-MAT or PUEBLO BOWL-O-MAT.

42. Defendant denies the allegations of paragraph 42 of the Complaint.

43. Defendant admits the allegations of paragraph 43 of the Complaint.

44. Defendant has no knowledge or information sufficient to form a belief as to whether in 1964 and thereafter to the date of the filing of plaintiffs' Complaint most bowling centers had great difficulty in meeting payments to defendant. It admits that certain of them had such difficulty. It has no knowledge or information sufficient to form a belief as to whether BOWL-O-MAT bowling centers had such difficulty, but alleges that each Bowl-O-Mat operating subsidiary which was indebted to defendant on secured contracts has since paid the balances due defendant, as modified by certain agreements between them and defendant.

45. Answering paragraph 45 of the Complaint, defendant admits that in or about June, 1964, plaintiff NATIONAL BOWL-O-MAT CORPORATION negotiated for extensions of due dates and reductions in amounts of payments of the indebtedness to defendant of several of its affiliated bowling center operators, including those referred to in paragraph 43 of the Complaint. It admits the allegations in the second sentence of paragraph 45 except that it alleges that said 4½% was not an additional interest charge but was the total financing and extension charge. It denies the allegation in the third sentence of paragraph 45.

46. Defendant denies the allegations in paragraph 46 of the Complaint.

47. Defendant has no knowledge or information sufficient to form a belief as to the allegations in the first sentence of paragraph 47 of the Complaint. It denies the allegations in the remainder of said paragraph.

48. Answering paragraph 48 of the Complaint, defendant has no knowledge or information sufficient to form a belief as to whether Bowl-O-Mat resolved to sell the FORT LAUDERDALE BOWL-O-MAT, INC., due to losses sustained by reason of its competition, if any, with IMPERIAL BOWL in Dania, Florida, and denies that it granted more favorable treatment to IMPERIAL BOWL on its debt owing to defendant than had been made available to FORT LAUDERDALE BOWL-O-MAT, INC.

49. Answering paragraph 49 of the Complaint, defendant realleges by reference the allegations in its answer to paragraph 31 thereof, and further answering admits that the conditional sale agreements of which the obligations were assumed by FORT LAUDERDALE BOWL-O-MAT, INC., required the consent in writing of defendant for any sale or transfer of the equipment purchased thereunder. It denies the allegations of the last sentence of paragraph 49.

50. Answering paragraph 50 of the Complaint, defendant realleges the allegations in its answer to paragraph 31 thereof, and, except as therein admitted, it denies the allegations in the first two sentences of said paragraph 50. Further answering, defendant denies the allegations in the last sentence of paragraph 50, except that it admits that it operates IMPERIAL BOWL in Dania, Florida, and alleges that it began the operation thereof on or about March 1, 1965, prior to its beginning the operation of

LAUDERDALE LANES. It alleges that it had previously sold pinsetters, lanes and related equipment to the former operator of IMPERIAL BOWL under conditional sale agreements which provided for payment of the purchase price over a period of years and further provided that in the event of default in the making of such payments, defendant would have the right to repossess such pinsetters and lanes, among other rights; that said former operator defaulted in the making of such payments and defendant, pursuant to its rights under said conditional sale agreements, repossessed the pinsetters, lanes and related equipment in said bowling center. Defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults was to operate such repossessed equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that, accordingly, defendant entered into possession of the premises of said bowling center pursuant to a lease to it from the owner thereof.

51. Defendant denies the allegations of paragraph 51 of the Complaint.

52. Defendant denies the allegations of paragraph 52 of the Complaint.

53. Defendant denies the allegations of paragraph 53 of the Complaint.

54. Defendant denies the allegations of paragraph 54 of the Complaint, but alleges that in some of the bowling centers operated by it it has installed A-2 conversion kits, which are available to all operators of bowling centers equipped with defendant's pinsetters.

55. Defendant admits that its Model A-2 pinsetters and its earlier model pinsetters, when modified by the use of its A-2 conversion kits, are more efficient than other pin placement devices in that they reduce the time necessary to complete a game of tenpins and thereby enable bowling centers so equipped to accommodate a larger number of bowlers than bowling centers having an equal number of lanes not so equipped. Further answering, defendant alleges that it equips bowling centers operated by it with A-2 conversion kits only in instances where it has determined that in its judgment the volume of business available to such centers is such that said conversion kits will pay for themselves within a reasonable time.

56. Answering paragraph 56 of the Complaint, defendant admits that it has installed A-2 conversion kits in its bowling center in Fairlawn, New Jersey.

57. Answering paragraph 57 of the Complaint, defendant admits that it has announced its intention to install A-2 conversion kits in the bowling center operated by it in Pueblo, but denies that it has installed or that it has any present intention of installing such kits in the bowling center operated by it in Poughkeepsie.

58. Defendant admits that the bowling centers operated by plaintiffs PARAMUS BOWL-O-MAT, PUEBLO BOWL-O-MAT and HOLIDAY BOWL-O-MAT, respectively, are not equipped with A-2 pinsetters or A-2 conversion kits. It has no knowledge or information sufficient to form a belief as to the allegations that PARAMUS BOWL-O-MAT has lost, and that HOLIDAY BOWL-O-MAT and PUEBLO BOWL-O-MAT will lose, business to bowling centers operated by defendant as a result of having failed to purchase such A-2 equipment.

59. Defendant denies the allegations of paragraph 59 of the Complaint.

60. Defendant denies the allegations of paragraph 60 of the Complaint.

61. Answering paragraph 61 of the Complaint, defendant realleges by reference thereto its foregoing answers to paragraphs 39, 40 and 41 of the Complaint.

62. Defendant denies the allegations of paragraph 62 of the Complaint.

63. Defendant denies the allegations of paragraph 63 of the Complaint.

64. Answering paragraph 64 of the Complaint, defendant realleges by reference its foregoing answers to paragraphs 52 through 59 thereof.

65. Answering paragraph 65 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 19 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 65.

66. Answering paragraph 66 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 21 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 66.

67. Answering paragraph 67 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 23 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 67.

68. Defendant denies the allegations of paragraph 68 of the Complaint.

69. Defendant denies the allegations of paragraph 69 of the Complaint.

70. Defendant denies the allegations of paragraph 70 of the Complaint.

71. Defendant denies the allegations of paragraph 71 of the Complaint and denies that the plaintiffs have any lawful grounds for attempting to determine, or to recover as damages herein, the "reasonably expectable profits," if any, referred to in said paragraph.

72. Defendant denies the allegations in paragraph 72 of the Complaint.

WHEREFORE, defendant denies that the plaintiffs are entitled to the relief prayed for in said Complaint or to any of such relief, or to any relief whatever in the premises, and prays that this action be dismissed and that it be awarded judgment for its costs herein.

By way of Counterclaim against the plaintiffs, NATIONAL BOWL-O-MAT CORPORATION; PUEBLO BOWL-O-MAT, INC.; BOWL-O-MAT PARAMUS OPERATIONS; HOLIDAY BOWL-O-MAT, INC.; SAGINAW BOWL-O-MAT, INC.; PARADISE BOWL-O-MAT, INC.; MUNCIE BOWL-O-MAT, INC.; SKORE LANES BOWL-O-MAT, INC.; MINNEAPOLIS BOWL-O-MAT, INC.; DES MOINES BOWL-O-MAT, INC.; and INDIANAPOLIS BOWL-O-MAT, INC., and against DANIEL LIEBLICH, and REUBEN DANKOFF, as counter-defendants, Brunswick Corporation alleges:

First Count.

1. This count is brought under 15 U. S. C. §§ 2, 15 and 26, including statutes commonly known as the Clayton Act and the Sherman Act, to recover three times the damages resulting from injury to the business and property of counterclaimant caused by counter-defendants' violations of Section 2 of said Sherman Act, and for injunctive relief against further violations thereof by counter-defendants.

2. Counterclaimant is a corporation organized under the laws of Delaware, having its principal offices at

Chicago, Illinois and a place of business in New Jersey. It is and for many years has been engaged in the business, among others, of manufacturing and selling to operators of bowling centers and to bowlers, directly or through dealers, bowling equipment, including lanes, automatic pin placement machines, or pinsetters, and related equipment, and pins, balls, shoes and other bowling supplies. Counterclaimant is one of the two largest and best known manufacturers and sellers of such equipment and supplies, the other being American Machine & Foundry Company (hereinafter referred to as "AMF"). Counterclaimant's bowling products are widely known and are sold throughout the United States and elsewhere and have long enjoyed a favorable reputation among bowlers and operators of bowling centers.

3. On information and belief,

(a) Counter-defendant NATIONAL BOWL-O-MAT CORPORATION (hereafter referred to as "BOWL-O-MAT") is a corporation organized under the laws of New Jersey and has its principal place of business in the City of Paterson, County of Passaic, State of New Jersey.

(b) Counter-defendant PUEBLO BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Pueblo, Colorado, and is wholly owned by BOWL-O-MAT.

(c) Counter-defendant BOWL-O-MAT PARAMUS OPERATIONS is a corporation organized under the laws of New Jersey, which owns a bowling center in Paramus, New Jersey, and is wholly owned by BOWL-O-MAT.

(d) Counter-defendant HOLIDAY BOWL-O-MAT, INC. is a corporation organized under the laws of New

York which owns a bowling center in Wappingers Falls, New York, and is wholly owned by BOWL-O-MAT.

(e) Counter-defendant SAGINAW BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Saginaw, Michigan, and is wholly owned by BOWL-O-MAT.

(f) Counter-defendant PARADISE BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Puerto Nuevo, a suburb of San Juan, Puerto Rico, and is wholly owned by BOWL-O-MAT.

(g) Counter-defendant MUNCIE BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Muncie, Indiana, and is wholly owned by BOWL-O-MAT.

(h) Counter-defendant SKORE LANES BOWL-O-MAT, INC. is a corporation organized under the laws of Michigan, which owns a bowling center in Detroit, Michigan, and is wholly owned by BOWL-O-MAT.

(i) Counter-defendant MINNEAPOLIS BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Minneapolis, Minnesota, and is wholly owned by BOWL-O-MAT.

(j) Counter-defendant DES MOINES BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Des Moines, Iowa, and is wholly owned by BOWL-O-MAT.

(k) Counter-defendant INDIANAPOLIS BOWL-O-MAT, INC. is a corporation organized under the laws

of New Jersey, which owns a bowling center in Indianapolis, Indiana, and is wholly owned by BOWL-O-MAT.

The locations of the above-mentioned bowling centers are referred to hereinafter as "Bowl-O-Mat locations."

4. Counter-defendant DANIEL LIEBLICH is a resident of New Jersey. On information and belief, he is a stockholder, officer and director of counter-defendant BOWL-O-MAT, is the chief executive officer thereof and, either directly or through BOWL-O-MAT, supervises and directs the operations of the counter-defendant corporations hereinabove alleged to be subsidiaries of BOWL-O-MAT.

5. On information and belief, GENERAL BOWLING CORPORATION is a corporation organized under the laws of New York and, either directly or through affiliated corporations, operates a number of bowling centers in various parts of the United States.

6. Counter-defendant REUBEN DANKOFF is a resident of New Jersey. On information and belief, he is a stockholder, officer and director of GENERAL BOWLING CORPORATION and chief executive officer thereof, and, either directly or indirectly, supervises and directs the operation of the bowling centers operated by GENERAL BOWLING CORPORATION and/or its affiliated corporations.

7. BOWL-O-MAT and/or its subsidiaries, and GENERAL BOWLING CORPORATION and/or its affiliated corporations are known as "chain" bowling operations because they constitute a number of bowling centers under common direction and control.

8. On information and belief, both BOWL-O-MAT, or a corporation or corporations affiliated with it, or DANIEL LIEBLICH, and GENERAL BOWLING CORPORATION, or a cor-

poration or corporations affiliated with it, or REUBEN DANKOFF, operate a number of bowling centers for AMF.

9. BOWLING PROPRIETORS' ASSOCIATION OF AMERICA, INC. (hereinafter called "BPAA") is an incorporated trade association, having its principal office in Illinois. Its membership consists of three classes of members residing or doing business in all parts of the United States, viz: (i) Regular Members, who are operators of bowling centers and members of state, city, district or regional bowling proprietors' associations affiliated with BPAA; (ii) State and Local Association Members, which are state, city, district or regional bowling proprietors' associations; and (iii) Associate Members, who are persons, firms or corporations engaged in the manufacture, sale or distribution of bowling equipment or supplies. At all times since at least 1961, BPAA has had a Chain Operations Committee, the stated purpose of which is to study and make recommendations with respect to the special problems incident to the chain ownership and operation of bowling establishments. Counter-defendants DANIEL LIEBLICH and REUBEN DANKOFF are and have been since at least 1961 active members of said Chain Operations Committee and one or more of the corporations with which each of them is associated is a Regular Member of BPAA.

10. Beginning in 1964, counterclaimant has undertaken the operation of a number of bowling centers, the previous operators of which had defaulted in their payments to counterclaimant under conditional sale agreements for the purchase of pinsetters, lanes and related bowling equipment. Counterclaimant undertook such operations in each instance after determining that the repossession and operation in place of its equipment offered it the only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults. It is

and has been counterclaimant's intention to operate such bowling centers only until its equipment and its operation thereof can be sold as going businesses to responsible buyers and on reasonable terms.

11. At all times since counterclaimant commenced the operation of bowling centers, as aforesaid, it has laid down for its employees, has announced publicly, and has enforced in good faith, to the best of its ability, rules for the operation thereof designed to assure that the bowling centers which it operates would compete fairly and openly with other bowling centers, without taking or seeking any unfair advantage by reason of the fact that counterclaimant is a manufacturer and seller of bowling equipment and supplies. While attempting, by the operation of bowling centers, to offset losses which it has incurred on account of defaults in the making of payments on purchases of bowling equipment from it, counterclaimant has attempted also to maintain the business and the good will which it had with bowling center operators generally in the sale of its bowling equipment and supplies. Counterclaimant is ready and willing to sell bowling equipment and supplies, at its regular established prices and terms, to all operators of bowling centers, new or existing, wherever located, including any in direct competition with a bowling center operated by counterclaimant.

12. Counter-defendants, individually and by combination and conspiracy among themselves and with others whose names are presently unknown to counterclaimant, have attempted to monopolize interstate trade and commerce in the business of operating bowling centers in and near the above-described Bowl-O-Mat locations by eliminating and excluding counterclaimant as a competing operator of bowling centers in or near such locations, in

violation of 15 U. S. C. § 2, commonly known as the Sherman Act.

13. In furtherance of their attempts to monopolize and their combination and conspiracy to monopolize, as aforesaid, counter-defendants have:

(a) made and published false statements to other bowling center operators to the effect that the operation by counterclaimant of bowling centers is an unlawful attempt by it to monopolize the bowling center business.

(b) made and published false statements to other bowling center operators to the effect that counterclaimant has exercised in areas where it operates bowling centers power to fix the prices for bowling lineage for other bowling centers in such areas;

(c) made and published false statements to other bowling center operators to the effect that counterclaimant subsidizes bowling centers operated by it with the purpose of driving out of business competing operators of bowling centers;

(d) made and published to other bowling center proprietors false statements to the effect that counterclaimant attempted to cause the counter-defendants which are subsidiaries of Bowl-O-Mat to default on their obligations to counterclaimant by granting them less favorable credit terms than granted to their competitors, with the purpose of taking over and operating such Bowl-O-Mat centers;

(e) made and published false statements to other bowling center proprietors to the effect that counterclaimant deceitfully, untruthfully and in bad faith has represented that it is willing to sell the

equipment and operation of the bowling centers which it operates to responsible buyers and on reasonable terms;

(f) made and published false statements to other bowling center operators that counterclaimant has not attempted in good faith to require the bowling centers which it operates to observe the principles of fair competition which it has formulated and published as the principles laid down by it for the operation of such centers;

(g) caused and sought to cause Bowling Proprietors Association of America and various local organizations affiliated with it, by making to them the false statements alleged in the foregoing subparagraph (a), to adopt resolutions condemning counterclaimant's operation of bowling centers as unfair and damaging competition to other bowling center operators;

(h) urged other bowling center operators to boycott counterclaimant as a source of bowling equipment and supplies;

(i) instituted the action against counterclaimant set forth in plaintiffs' Complaint herein without good or sufficient grounds for doing so, has circulated among other bowling center operators copies of said Complaint and has publicized its said suit widely among other bowling center operators, both orally and in writing.

(j) solicited and urged Bowling Proprietors Association of America and various of its affiliated local organizations to help defray the expenses of prosecuting the claims against counterclaimant which are

alleged in the complaint of the plaintiffs in this cause and, in the course of such solicitation and inducements, made the false statements alleged in the foregoing subparagraph (a) and further statements to the effect that counterclaimant's operation of bowling centers is a menace to the business of all other bowling center operators and that, if the plaintiffs herein should prevail upon the claims alleged in their complaint, other bowling center operators throughout the country might be in a position to recover large amounts of damages from counterclaimant on the basis of similar charges,

all with the willful, wanton and malicious purpose and intent of creating suspicion, resentment and ill will against counterclaimant in the minds of other bowling center operators, who are counterclaimant's market for the bowling equipment and supplies which it manufactures and sells, to the end that such other operators will not purchase bowling equipment and supplies from counterclaimant and thereby it will be coerced to abandon its operation of bowling centers in or near said Bowl-O-Mat locations.

14. In making the false statements about counterclaimant alleged in the foregoing paragraph 13 hereof, counter-defendants either knew that such statements were false or made such statements recklessly and maliciously, without knowledge as to their truth or falsity.

15. The above alleged attempts to monopolize and combination and conspiracy to monopolize are continuing and will continue hereafter unless enjoined by this Court, and threaten counterclaimant with injury and damage to its business.

16. By reason of the above alleged attempts to monopolize and combination and conspiracy counterclaimant has been damaged in its business in the amount of $1 million.

Second Count.

1. This counterclaim is brought under 15 U. S. C. §§ 1, 15 and 26, including statutes commonly known as the Clayton Act and the Sherman Act, to recover three times the damages resulting from injury to the business and property of counterclaimant by counter-defendants' violations of Section 1 of said Sherman Act and for injunctive relief against further violations thereof by counter-defendants.

2-11. Counterclaimant realleges by reference thereto paragraphs 2 to 11, inclusive, of its First Count herein.

12. Counter-defendants have combined and conspired with each other and with others whose names are presently unknown to counterclaimant to restrain interstate trade and commerce in the operation of bowling centers and in the manufacture and sale of bowling equipment and supplies, in violation of 15 U. S. C. § 1, commonly known as the Sherman Act.

13. Counter-defendants, in furtherance of their said combination and conspiracy, have agreed to do and have done the acts alleged in subparagraphs (a) to (j), inclusive, of paragraph 13 of the First Count herein, which are hereby incorporated by reference as subparagraphs (a) to (j), inclusive, of this paragraph.

14, 15. Counterclaimant realleges by reference thereto paragraphs 14 and 15 of its First Count.

16. By reason of the above alleged combination and conspiracy counterclaimant has been damaged in its business in the amount of $1 million.

Third Count.

1. This Court has jurisdiction of this counterclaim pendent to its jurisdiction of plaintiff's Complaint and of the First and Second Counts herein, for the reason that it arises out of the same acts and among the same parties and out of injuries and threatened injuries to the same business, and should be determined in the same proceeding in order to do complete justice among the parties.

2-11. Counterclaimant realleges by reference thereto paragraphs 2 to 11, inclusive, of its First Count.

12. Counter-defendants, individually and by combination and conspiracy among themselves and with other persons presently unknown to counterclaimant, have willfully, wantonly and maliciously injured the business of counterclaimant in the sale of bowling equipment and supplies and have attempted willfully, wantonly and maliciously to destroy counterclaimant's business in the operation of bowling centers and have willfully, wantonly and maliciously injured counterclaimant's business reputation and good will.

13. Counter-defendants, to accomplish the willful, wanton and malicious injuries alleged in the foregoing paragraph 12, have done the acts alleged in subparagraphs (a) to (j), inclusive, of paragraph 13 of the First Count herein, which are hereby incorporated by reference as subparagraphs (a) to (j), inclusive, of this paragraph.

14, 15. Counterclaimant realleges by reference thereto paragraphs 14 and 15 of its First Count herein.

16. By reason of the above alleged malicious injuries counterclaimant has been damaged in its business in the amount of $1 million.

WHEREFORE, counterclaimant seeks judgment against each and all of said counter-defendants in the amount of $3 million being threefold the amount of its actual damages, together with its costs and attorneys' fees herein, under its First and Second Counts and in the amount of $1 million for general damages and $2 million for punitive damages under its Third Count, and prays that the Court will issue writs of injunction herein, both temporary and permanent, enjoining and restraining the counter-defendants and each of them from further engaging in the attempts to monopolize or in the combination and conspiracy to monopolize alleged in the First Count herein, and from the combination and conspiracy to restrain interstate trade and commerce alleged in the Second Count herein, and from the willful, wanton and malicious injuries to counterclaimant's business alleged in the Third Count herein, and counterclaimant also prays for such other and further relief in the premises as the Court may deem proper and fitting.

STRYKER, TAMS & DILL

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EXCERPTS FROM TESTIMONY.

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DANIEL PARKE LIEBLICH, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Where do you live?

A. In Paterson, New Jersey.

Q. Do you have a place of business?

A. Yes, sir.

Q. Where is that?

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A. Also in Paterson, New Jersey, at 140 Market Street.

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Q. What is the name of your business?

A. The Company is called Treadway Companies, Inc.

Q. In what business is Treadway Companies, Inc., engaged?

A. In three different types of business.

Q. Would you please describe them?

A. The first and the original one was—is the bowling business. That's the operation of bowling centers.

The second business is the operation of hotels or motor inns.

And the third is food distribution.

Q. What relationship, if any, does Treadway Companies have with the National Bowl-O-Mat Corporation?

A. Our company when it was formed in 1961 was called then National Bowl-O-Mat Corporation, since it was only in the bowling business.

In subsequent years, as the company began to diversify, its name was changed, first from National Bowl-O-Mat Corporation to NBO Industries, and then two years ago after the company acquired the Treadway Inns, we changed the name of our parent company to Treadway Companies.

So actually it is the same corporation but by different name.

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Q. Are you familiar with the Complaint which has been filed in this action?

A. Yes.

Q. I will read to you the names of the different plaintiffs as they appear in the Complaint and I will ask you, if you will, to please state the relationship which the different plaintiff companies have to Treadway.

First, Pueblo Bowl-O-Mat, Inc.

A. That's a wholly-owned subsidiary of Treadway Companies.

Q. In Treadway, sir, who is the president?

A. I am.

Q. Do you hold any office in Pueblo Bowl-O-Mat, Inc.?

A. Yes, sir.

Q. What is that office?

A. I am president of that company as well.

Q. Do you in the course of your duties actually supervise and control in some way the activities of the various plaintiff companies?

A. Yes, under the policies laid down by the Board of Directors of Treadway Companies, I am directly responsible for the operations of all of the subsidiary companies.

Q. Now, sir, Bowl-O-Mat, Paramus, operation, how

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is that company customarily referred to in the industry or within the Treadway organization?

A. Paramus Bowl-O-Mat.

Q. In respect of Paramus Bowl-O-Mat, who is the chief officer?

A. I am.

Q. And is your testimony the same as to all of the other plaintiffs who are listed in the Complaint, that is to say, are you the president of all of the plaintiff companies?

A. Yes, I am.

Q. And as you said before, the chief officer?

A. Yes.

Q. Subject to the direction of the directors of Treadway; is that right?

A. Yes.

Mr. Hoffmann: I will then, perhaps, save time, if I may, your Honor, by just indicating the names again and ask the witness where these various centers are located and how they are commonly referred to.

The Court: Paramus is a subsidiary of Treadway, right?

The Witness: Yes, your Honor.

Q. Holiday Bowl-O-Mat, Inc.?

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A. A subsidiary.

Q. Where is that located?

A. In Wappingers Falls in New York, which is just outside of Poughkeepsie, New York.

Q. Is your testimony as to that the same as before, you are the president of Holiday?

A. Yes.

The Court: Also a subsidiary?

The Witness: Yes.

Q. Can we take that for these other plaintiffs whom I shall now read, it is a subsidiary of Treadway and you are the president of that subsidiary company; is that right?

A. Yes.

Q. Next one, Saginaw Bowl-O-Mat, Inc., where is that located?

A. Saginaw, Michigan.

Q. Paradise Bowl-O-Mat, Inc.?

A. It is in a suburb of San Juan known as Puerto Nuevo.

Q. Muncie Bowl-O-Mat, Inc.?

A. Muncie, Indiana.

Q. Skor Lanes Bowl-O-Mat, Inc.?

A. In Taylor Township, Michigan, which is a suburb of Detroit.

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Q. And again these are all subsidiary to Treadway?

A. Yes.

Q. Minneapolis Bowl-O-Mat, Inc.?

A. That's located, technically, St. Anthony Township, which again is a suburb of Minneapolis, just on the borderline of Minneapolis.

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Q. Des Moines Bowl-O-Mat, Inc.?

A. That's Des Moines, Iowa.

Q. Indianapolis Bowl-O-Mat, Inc.?

A. Indianapolis, Indiana.

Q. Can you tell us whether or not Treadway is a publicly owned company?

A. Yes, sir; since 1961 it has been listed for trading on the American Stock Exchange.

Q. Will you list for us who the officers of Treadway are?

A. I didn't hear your question.

Q. Will you list the officers of Treadway?

A. Yes. I am the president and Chairman of the Board. The vice presidents are Richard A. Davis, Richard A. Lumsten, Jerry Lacker, the treasurer is Simon Gluckman, the secretary is Murray L. Cole.

Q. Does Treadway itself operate any bowling centers?

A. No, it does not. You mean the Treadway Companies.

Q. The Treadway Companies itself.

A. No, it does not.

Q. Now, sir, I hope you will be good enough to tell us a little bit about your background, your business life. First, where you were born.

A. I was born in Paterson, New Jersey.

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Q. And where were you raised, so to speak, brought from birth to adulthood?

A. In Paterson.

Q. And as to your formal schooling, sir, where did that take place?

A. I attended local schools in Paterson, and I attended the Hunt Preparatory School in Princeton, New Jersey, then attended Princeton University, from which I graduated just before the war. I went to law school and completed my law school at Yale after the war.

Q. There is sort of a gap in your life. Were you in the war in some way?

A. Yes, sir.

Q. In what branch of the service?

A. I was in the Air Force for five years during the war.

Q. I take it we are talking about the war that is called World War II, is that correct?

A. Yes.

Q. Just incidentally, when you entered the armed forces, the Air Force, what rank did you have?

A. I was a second lieutenant when I entered the service.

Q. And when you came out of the service, what

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rank—

A. I was lieutenant colonel at that time.

Q. Have you since left the service altogether?

A. Yes, sir; after quite some years in the Air Force Reserve after the war, I retired a few years ago as colonel in the Air Force Reserve.

Q. Thank you very much.

Mr. Lieblich, are you a member of the Bar of this state?

A. Yes, I am.

Q. When were you admitted?

A. 1948.

Q. And did you actively practice law upon your admission?

A. Yes, I did.

Q. For how long a time?

A. Well, I was in active practice until perhaps six or seven years ago.

Q. Let me ask you this. When did you become—you personally—first become interested in bowling as a business?

A. In about 1958.

Q. Can you tell us the circumstances?

A. Yes, sir. I was then engaged in the practice of law. I specialized in corporate law and real estate law,

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and corporate syndication. And I became attorney for a group of people that were beginning to organize a bowling center.

Q. Do you have any recollection of what general bowling conditions were like in 1957 or '58, were they good, bad or indifferent, something of that order?

A. Well, to use a different word, they were excellent.

Q. And how was that knowledge obtained?

A. Well, when I first began to represent this group of investors they had one bowling center that just opened in Paterson and consisted of 52 lanes. And I was well aware of the great profit that it was throwing off. And subsequent to that I embarked upon, as counsel with these people—with the construction of two additional bowling centers in New Jersey, Columbia Park, just outside of Jersey City, and Paramus Bowl-O-Mat, which is one of the plaintiff companies.

And I was quite aware, from the very beginning, how very successful those operations were.

Q. Tell us, please, about when it was that you first went into the bowling business, yourself.

A. Well, after the initial experience representing these clients, and families, in or about 1959 I thought this was a wonderful form of investment. I could see a great deal of possible expansion, to build a company

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and recreation, and with my family, some of my close friends, we embarked upon a program of acquiring and building bowling centers around the country.

And before long I found myself involved in the administration of the affairs of those companies on a more or less full-time basis.

Q. You speak of companies. Was a company formed to carry out the purpose you have described?

A. Yes, sir. As we would undertake a new operation—if my memory is right, Saginaw Bowl-O-Mat in Michigan was the first that I undertook myself as a venture. We formed a new company called Saginaw Bowl-O-Mat. And as we proceeded to the other companies, because there are often different groups of investors, each became a separate corporation, with monies contributed to each by that group of investors.

Q. Now, sir, you say that these separate companies were all wholly-owned subsidiaries. Was that some later corporate change?

A. Yes, sir. At that time there was no National Bowl-O-Mat Corporation, and of course, there was no Treadway Companies. And each was a separate corporation. However, even at the first meeting of my clients and families, we envisioned then a public company one day. And after we had approximately ten of these companies

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organized I made arrangements with the gentlemen who became our Board of Directors to work with a Wall Street investment banking firm.

And early in 1961 a public corporation was organized known as National Bowl-O-Mat Corporation. And at that time all the stock of these ten different companies that I had organized all became part of National Bowl-O-Mat Corporation. An investment banking firm underwrote a few—about $1,800,000, so we could continue our efforts to acquire additional centers throughout the country.

Q. Is that National Bowl-O-Mat Corporation that you described now the predecessor to the present Treadway Companies?

A. Yes, sir.

Q. Mr. Lieblich, coming to your first company, Saginaw, that you have described briefly in your testimony, what sort of equipment is in the Saginaw center?

A. It is Brunswick equipment, automatic—

Q. How was it obtained?

A. It was purchased from the Brunswick Corporation on a conditional sale contract.

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Q. In relation to all of the other centers, except for Holiday and Wappingers Falls, what was the equipment?

A. They were all Brunswick equipped.

Q. And were they obtained in the same way by a conditional sales contract?

A. Yes, sir; but some of the centers that are part of the plaintiffs we did not build ourselves, we purchased from former owners. And in those cases we assumed their obligation on the conditional sales contract that they had executed with Brunswick prior to our purchase of their assets.

Q. Can you segregate them out for us, tell us which are which?

A. Yes, sir. We built ourselves Saginaw Bowl-O-Mat, Muncie Bowl-O-Mat, Indianapolis Bowl-O-Mat, and Minneapolis Bowl-O-Mat. And we purchased from other owners Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Fort Lauderdale Bowl-O-Mat, Des Moines Bowl-O-Mat and Skore Lane Bowl-O-Mat.

I neglected one that we built ourselves. That was in Pueblo, Colorado. I think I have covered all of the plaintiffs.

Q. In relation to Holiday, which I had sort of filtered out, what was the source of supply for

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equipment for that?

A. They had AMF automatic pinsetters, pin spotters.

Q. And that was a center which you purchased?

A. Yes, sir.

The Court: Just to refresh the jury's mind, tell them what AMF is again.

The Witness: There are two companies that manufacture bowling equipment—there are a few more, but none really of any significance—one was Brunswick Corporation and the other one was American Machine and Foundry Company, now called AMF.

The Court: Thank you.

• • •

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Q. I believe before the recess I was asking you about the named plaintiffs in the Complaint. Treadway is one; is that right?

A. Yes.

Q. You charge that Treadway in some way was injured by the practices contained—described in the Complaint?

A. Yes.

Q. In what way is that?

A. Well, the profit or loss that the Treadway Companies reports on an annual basis to its stockholders is the sum of the profits or losses of all of its subsidiary companies.

To the extent that some of the bowling subsidiaries have been so badly affected we have lost over one million dollars in just four of the plaintiff companies where Brunswick has competed with us, and it certainly has had

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a terrible effect on the performance of the company since the years since we have been a public corporation.

Q. Does Treadway file a consolidated earnings report along with its subsidiary companies?

A. It just files a report which is a composite of all of the operations of its subsidiary companies.

Q. Does Treadway have any independent ways of making money other than through its subsidiary companies?

A. It has some management contracts in the parent name, but aside from that it is purely the result of the profits or losses of its subsidiary companies.

Q. So it is fair to say that when the subsidiary companies make money, Treadway makes money; is that the meaning of your question?

A. Yes.

Q. Is the same true on the loss side, that when its subsidiaries lose, so does Treadway?

A. Yes. We had a very difficult time for many, many years with losses in our companies.

Q. Mr. Lieblich, you were in the courtroom, were you not, when I made my opening statement?

A. Yes, I was.

Q. Did you observe my cumbersome gestures when I was trying to mimic throwing a bowling ball down the center of a bowling lane?

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A. Yes.

Q. And I tried in my own way to describe a bowling center, did I not?

A. Yes.

Q. Would you be good enough to describe it for the jury and the Court?

A. Well, I think you described it rather accurately, Mr. Hoffmann. I think as everyone knows, what the game of bowling is, it is on television so frequently, the game itself consists primarily of throwing a ball down the maple lanes to strike down the ten pins that stand.

There are two balls in each frame. If you hit the pins down with one, it is called a strike.

If it is the second ball, if you use a second ball, it is a spare, if you hit the remaining pins.

There are ten frames in a game.

That's the basic game itself.

Of course, the automatic pinsetters at the end of the deck will pick up the pins and reset them in place of the pinboys that were prevalent many, many years ago.

That's merely a part of what a bowling center is. We consider them as family recreational centers.

In addition to the game itself, we have many other elements of the center that we in fact offer our patrons or customers.

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We have nurseries so that as each year goes by we have more and more ladies that bowl in the daytime, and often leave their children with us in our nurseries.

We have a snack bar where ladies in the morning can have a coffee or sandwich, and later at lunch or dinner hour our customers can have refreshments.

We have cocktail lounges, where the liquor laws permit. In some of our cocktail lounges we have entertainment where the community calls for that type of activity.

We rent shoes at our centers, it is called shoe rental income.

We have games, we have cigarette machines, all these are part of the income that we look forward to in the operation of bowling centers.

We try to cater to all aspects of the community, ladies, children, school children, open bowlers and league bowlers.

Q. These various activities besides bowling which you describe as taking place in bowling centers, are they sources of revenue as well as the bowling of the game?

A. Yes, in some of the areas they are a very important part of the income that we derive from the operation of the center itself.

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Q. Is there in the operation of Treadway any system for the reporting of the traffic that goes through a bowling center part of your chain?

A. Yes.

Q. Would you describe that for us, please?

A. Well, at Paterson we have our corporate headquarters, and all of the accounting functions of the company are handled in Paterson.

Every day the managers of our local bowling centers will deposit in local banks in their communities the receipts for the prior day's activities, then they mail in to Paterson that very day what we call a daily report, which describes the income of that prior day.

All payrolls are processed in Paterson, all bills are paid from Paterson.

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Q. Do the reports which you receive include reports of the economic conditions within the bowling industry?

A. Yes.

Q. Is that done on any regular periodic basis?

A. Well, this is done in any number of ways. During the year I will go out myself to visit our field operations whenever I can. And when I do. And I try to visit other centers in those communities. I attend, whenever I can, meetings of the Bowling Proprietors of America, where the problems—good or bad—of the industry are discussed. The other our men on our staff in the bowling division are constantly concerned with what is happening in the industry. From all these sources I do get a good picture of what is happening in our industry.

Q. Do you receive reports which describe in any precise way the income received by your separate bowling centers?

A. Yes, sir.

Q. How often are those reports received?

A. Well, as I indicated, Paterson is the central administrative headquarters for the company. And we have a computer department. And each month profit

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and loss statements are prepared for every subsidiary company, which, of course, I receive, and our department heads receive. And we, in that manner, do know every month just how each of our companies is proceeding.

Q. And do those reports you speak of come across your desk?

A. Yes, sir.

Q. And do you examine them as they are received?

A. Yes, I do.

Q. Is that a practice of yours?

A. Yes, it is. It always has been.

Q. Do you receive reports as to inventory in your various bowling centers? When I say, "your," I mean, of course, Treadway's various bowling centers.

A. Yes.

Q. Are they submitted on a regular basis?

A. Yes, they are.

Q. How often?

A. The monthly profit and loss statements can't be prepared until the inventory reports come in from the field. The monthly profit and loss statements would be meaningless without an understanding of what the inventories in the field operations are at

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the end of each month.

Q. Has this structure of reporting, which you describe, of reports which flow between your subsidiary companies and Treadway, been true since the beginning?

A. Yes, sir; they haven't varied at all, except we didn't have a computer in the early days and we have one now.

Q. Is that something bigger than the one I brought into the courtroom yesterday?

A. Yes, sir.

Q. Earlier in your testimony, Mr. Lieblich, you described coming into the bowling center business at the end of the 1950's and at the beginning of the 1960's, and I asked you to describe what your impression was in the late 50's of economic conditions in the industry. If I may remind you, sir, you chose not to follow the words I gave—were they good, bad or indifferent—but you said they were excellent. Do you have any summary you can give us of the economic conditions as they prevailed in the bowling industry in this country in the period of time covered by the 1960's?

A. Yes.

Q. Has that condition changed or does it

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persist?

A. It changed very dramatically.

Q. And about when did that happen?

A. The downturn began to occur just immediately after we became a public company in the Spring of 1961. I wasn't precisely aware of it, as it was occurring. Later, in retrospect, it was rather clear what was happening. I recall that soon after we had this public offering I attended the first meeting that I ever did of the Bowling Proprietors Association of America. Each year there is an annual meeting of all the leaders of the industry, all the proprietors, as well as the leaders, and I attended the first one in June 1961. It was held in a resort community in New York State. And at that time I was made painfully aware of what was happening around the country as more and more bowling centers were opening and the profits of 1958, '59 and '60 were quickly disappearing and losses were being sustained.

And I remember, also, at that very convention, one of the proprietors brought in a publication called Barrons—this is a very well known financial publication, it comes on a weekly basis—and they had in this, in June of 1961, a very revealing article which was entitled, "Wobbly Pins." And a

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very perceptive young editor of that publication predicted just what was going to happen in the bowling industry. And he spoke of the overbuilding and what effect it was going to have on the affairs and activities of the companies involved in the bowling industry.

Q. Mr. Lieblich, do you have any standard measurements which would speak to the health or lack of health of the economy in bowling?

A. Yes, sir.

Q. Can you give us some example of that?

A. Well, when I was describing the game of bowling, I said there were ten frames in a game. And a game is also referred to as a line of bowling. This is the measurement of the game.

Now, when I first become involved in the bowling business, I had my first discussion with the Brunswick Corporation as to what should constitute a successful bowling operation, it was given me to understand that 14,000 lines per lane, 14,000 games per lane per year was what we could anticipate. And as I indicated earlier—as to my clients, and my friends, and my family—the investments in these bowling centers was always predicated on the assumption that we would be doing

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14,000 lines per lane. As a matter of fact, the first three bowling centers with which I was involved, all in New Jersey—Columbia Park, Bowl-O-Mat in Paterson and the Paramus Bowl-O-Mat—we enjoyed for the first three years of those operations 15,000 lines per lane.

So I was quite satisfied with that which Brunswick had suggested to me and, I learned elsewhere in the industry, was appropriate. That was the measure of profitability of bowling in those early days.

Q. That is, 14,000——

A. 14,000 lines per lane, yes.

Q. And when you speak of 14,000 lines, are you suggesting an annual figure?

A. Yes, sir; so that if we had a 40-lane bowling center, 40 lanes times 14,000 would be 560,000 games or lines in that whole year.

Q. Just for the sake of clarity, you are saying a line is the same as a game?

A. Yes, sir; they are interchangeable words.

Q. And then what you just gave in your calculation, was it not, was to take the number of lines and multiply it by the number of lanes?

A. Correct.

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Q. Was there in the 1960's any way in which you could take the number of lines and lanes and from that derive an income picture for a bowling center?

A. Yes.

Q. How would you do that?

A. Well, each year we would know exactly how many lines per lane we did bowling. So it is just a matter of examining our statements at year-end, see how many lines that we did bowl in a center.

Q. But to convert that into revenue another factor is necessary.

A. Yes.

Q. What would that be?

A. That would be the price we are charging.

Q. Yes. And was there any average price per line that you can fairly describe as being an average price existing during the first part of 1960?

A. Yes, sir; I think it is a generally fair statement, not just for our company, but most everyone that I encountered throughout the industry—the average price was approximately 50 cents per game.

Q. Did there come a time when that average price changed somewhat?

A. Yes. With the tremendous inflation we have had

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in the last 10 or 11 years, the prices gradually increased. It has increased much less than the cost of living, much

less than the cost of other recreational activities. And today, I would say the average price is approximately 60 cents. So in these 10 or 12 years our price has gone up approximately 20 percent, which is considerably less than any other form of recreation.

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Q. Now, then, one element of the revenue in a bowling center is the number of lanes bowled times the price?

A. Yes.

Q. What other elements are there?

A. Well, there is our shoe rental, our snack bar income, our cocktail lounge income, our pro shop income, or if I may describe, we call the pro shops the little retail stores that we have in each of our centers where we sell to our customers bags, balls and shoes, and what we call miscellaneous income, which is the revenue from cigarettes, games and other concession items, sale of lockers, rental of lockers.

Q. Do you use any formula in the practice of your business to equate in some way, that is, to indicate what the revenue from the actual bowling of games is in relationship to other revenues that comes in, such as you have just described?

A. Yes.

Q. What is that formula, and if there is one, explain how it came to be.

A. It is merely an analysis, from our own records, over a period of many years as to the actual income that we have received from these other areas of business related to our income in bowling itself, so analyzing

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our own figures for a period of years it is a relatively simple procedure to determine that from every dollar, from every

thousand dollars of bowling revenues that we enjoy we will get a certain additional amount of income from our shoe rentals, our snack bars, our cocktail lounges, and these other miscellaneous areas of income.

Q. Do you know offhand from your own memory what the relationship is, that is to say, how much $1,000 of bowling game revenue can realize in terms of the other revenues?

A. Not from my memory because it will vary from center to center, depending upon the mix of products we have.

For example, in Minneapolis we do not have a full liquor license because of the local laws, so I wouldn't expect that our cocktail lounge there, which sells just beer, to produce the same amount of revenue or income as our lounge would in Detroit, where we have a very active bar.

Mr. Hoffmann: May I just have a moment to do some housekeeping, please?

Q. Mr. Lieblich, how would you classify the general expenses incurred in doing business by your bowling subsidiaries, Treadway's bowling subsidiaries?

A. I don't understand.

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Q. Of what kind are these expenses? There are expenses, are there not?

A. Yes, sir.

Q. Would you break them down into their types, if you will?

A. Yes. The single greatest expense we have is the cost of our labor. Even though we have automatic pinsetters to take the place of the pinboys of prior years, labor is still our greatest single expense.

The next highest category of expense, there are two that almost equal each other, one is the rent that we would pay to a landlord, and of almost equal significance is the depreciation that we have on our equipment.

Q. Before going on, would you pause to tell us what you mean by depreciation on your equipment?

A. Depreciation is a bookkeeping or an accounting term. Perhaps I could best describe it by saying that if you bought an adding machine for $150, and you knew from experience that in ten years that adding machine would wear out, you should depreciate that adding machine by $15 each year, so that at the end of the ten-year period you'd have—you'd be able to buy a new adding machine, because that is the expected life of an adding machine.

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We apply the same principles in business, and of course, in our bowling industry, to all of the bowling equipment that was purchased.

So each year we set an expense on our books for depreciation which is the estimated life of the equipment so that we can establish a reserve in order to purchase new equipment when that equipment will be worn out.

Q. Now, you say that was your third greatest expense item, depreciation of equipment?

A. No, in many cases it is identical to our rental expense.

Q. And are there any other expenses that come to mind?

A. Oh, yes, there are many.

Utilities are a significant expense, taxes too—on real estate and personal property.

A much higher expense than either utilities or taxes are—is interest. When you borrow money to pay for

equipment or you purchase equipment on a conditional sales contract, it is done on a finance contract, and the interest involved is a very sizeable, or was for us a very sizeable expense.

Then the expenses really trail off. Repairs and maintenance are still a large item.

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Then we go down, there is telephone expense and cleaning up here and cleaning up there, resurfacing every year. Cost of our pins each year.

And I think I have touched on most of the major items. I'm sure there are one or two that I have left out.

Q. Are any of these expenses that you have just listed constant expenses, expenses of more or less the same size from year to year?

A. Yes, our labor cost is essentially identical.

Although real estate taxes go up each year, they are basically the same, they go up a little every year.

Depreciation is, of course, a constant expense.

Interest remains high, is ultimately reduced as the debt is paid off.

Repairs and maintenance remain essentially the same each year, although as the center gets older one would expect to spend a little more money to keep it in good condition.

Q. Is in your experience as an owner and operator of bowling centers, is the kind of profit yield, made by the activities you have described, more or less—

Mr. Seeley: Will you just hold up for a second? The airplane.

Mr. Hoffmann: Quite so. I shall withdraw

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the question entirely.

(Record read.)

Q. Is the type of profit more or less the same for every dollar that's expended; in other words, I'm putting the question a little differently perhaps, can you anticipate that for the first dollar over expense that you have an operating bowling center you may have the same yield in profit as you would have for the last?

A. Well, bowling is a very unusual business in this important sense, and when I was discussing before the economics of the industry, I suppose I should have enlarged upon my answer on this very point: It was for this reason primarily that I became interested in the bowling business, that was why I was able to have invested so many millions of dollars initially from my clients and my friends and my family, and ultimately from the public.

Bowling is a very—bowling is a very attractive business in the sense that it is called in Wall Street and other areas a very highly leveraged business.

I will try to explain to you what I mean by "highly leveraged." The major expenses from running a bowling center are some of these fixed expenses that I have described to Mr. Hoffmann, our salaries remain fairly constant, our depreciation is constant, our taxes are

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constant.

Now, with these fixed expenses remaining the same, if we do 5,000 lines per lane—of course, we couldn't stay in business by doing something so small—or 10,000 lines per lane, once we pass a certain number of lines per lane or games each year, and for this purpose let's say it is about

eight or nine thousand lines, then every additional dollar of bowling revenue that comes into that center becomes profit for the center operator.

That sounds unusual, but it is not because there are no really additional expenses involved translated to that additional income.

What I'm saying, Mr. Hoffmann, is that if we should go from 9,000 lines per lane to 14,000 lines per lane, as we used to do, our depreciation isn't going to be any more, the taxes we pay on real estate wouldn't be any more, we won't pay our landlord any more money for rent, we may have to add just a few dollars of additional help for the center, but not really very much.

And this is what makes bowling or made bowling back in those days so very attractive. It is because of this highly leveraged aspect based on the fact that bowling is a business of fixed expenses.

If I can compare this with a manufacturing estab-

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lishment, if someone is producing automobiles and they make 8,000 automobiles, if they make another 4,000 automobiles they have very specific expenses, the cost of these new automobiles and the labor involved.

We don't have them.

Mr. Hoffmann: Your Honor, may I have this marked as P-1 for identification?

(Exhibit P-1 marked for identification.)

The Court: What is it, short legend?

Mr. Hoffmann: 1 for identification is a computation of the proprietor's interest and depreciation and cash needs.

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And I think, if I may, I will also have marked at the same time, since they go together, a computation entitled "Charges for determination of net income by Brunswick and by Brunswick customers."

(Exhibit P-1-A marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's Exhibit 1 for identification and I ask you if you can tell us what it is.

A. It is a chart showing the computation of individual proprietor's interest and depreciation and the cash that he would need to pay his equipment obligations to Brunswick Corporation.

Q. Can you tell us how this chart was prepared?

A. Yes, sir. I prepared it from my knowledge of the cost of the Brunswick pinsetters and the cost for Brunswick lanes.

Q. From what was your knowledge derived?

A. Not only from our own records, but my knowledge of industry practices, Brunswick charges other people in the industry as well as ourselves.

Q. And do you have records which support this chart?

A. Yes, sir.

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Mr. Hoffmann: Now, I'd like, if I may, to go through these items with the witness.

Mr. Seeley: I suggest it is not in evidence yet, your Honor.

Mr. Hoffimann: I'm trying to establish the document as a document for evidence.

The Court: Any objection to it?

Mr. Seeley: Yes.

The Court: Do you want to cross-examine him as to the foundation or the practices used?

Mr. Seeley: I certainly do.

The Court: In arriving at these figures. He said he prepared them based on his experience in the industry and his records; right?

The Witness: Yes, your Honor.

The Court: I will permit you to cross-examine him.

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Mr. Lieblich, in the caption of Plaintiff's Exhibit 1 it refers to computation of proprietor's interest. Now, is that any particular proprietor?

A. No, it is a hypothetical, any proprietor.

Q. Is it every proprietor; does this purport to represent the interest and depreciation and cash

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need of every proprietor?

A. Yes, I think so.

Q. I notice here that under "Interest" you show that a pinsetter was purchased for $8100 which is payable over a period of eight years.

The Court: Just a minute.

Are you familiar with these figures without referring to them?

The Witness: Yes.

The Court: You don't have them in front of you?

The Witness: Yes, I do. Mr. Hoffmann gave me a copy.

The Court: All right.

Q. And the interest you show over eight years is $218; is that right?

A. Yes.

Q. Per year?

A. That's right.

Q. And in the line——

The Court: Can I hear that again?

(Record read.)

The Court: I didn't hear you say "per year."

Mr. Seeley: Right.

Q. Now, on the lane you show that purchased on

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a five-year basis, and the interest per year on that to be $102; is that right?

A. Yes.

Q. And adding $218 and $102, you come to $320, per year interest, right?

A. Right.

Q. If a proprietor, any proprietor, for instance, made this purchase of a pinsetter and lane in 1960 and followed this schedule of payments, his lanes would be paid for by 1965, wouldn't they?

A. That's right.

Q. And then his interest would go down by $102 per year from then on?

A. That's right.

Q. And after he had paid for eight years, if he paid by the schedule, he'd have no more interest to pay on the pinsetter, either, would he?

A. That's right.

Q. No interest expense then.

Now, does this exhibit, Plaintiff's Exhibit 1, purport to speak as of any particular time; is it 1965, or 1969?

A. It is a hypothetical presentation on the cost to a proprietor who purchased the Brunswick equipment under the bases that we have set forth here.

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Q. Does it matter when he purchased it?

A. No.

Q. But whenever he purchased it——

Mr. Hoffmann: Pardon me. I hate to interrupt your voir dire, but may I point out, Your Honor, that this line of questioning does not go to admissibility, but to the weight to be attached to the document, as to which I submit with great respect that your Honor can carefully guide the jurors as to the weight significance of the document; in other words, the admissibility doesn't depend upon the span of years, but it depends upon the meaning of the presence of itself, which has to do with how much needs to be paid, for example, to Brunswick while the proprietor is indebted to Brunswick.

The Court: Yes, but the witness has conceded this was a hypothetical case that was used as the basis for the preparation of this chart.

I think your adversary is entitled to cross-examine as to other practices that would be considered as far as this chart is concerned. I think that's the area in which you are getting into.

Mr. Seeley: That's correct, your Honor.

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The Court: I will permit it. Overruled.

By Mr. Seeley:

Q. Your company has frequently made payments to Brunswick on equipment contracts, have they not?

A. Yes.

Q. And you have been shown by statements how those were applied as between principal and interest when they were received by Brunswick?

A. No, but if we asked this question we could get this breakdown.

Q. Have you ever observed how they were applied?

A. Observed what?

Q. How the payments made by the Bowl-O-Mat companies were applied to their indebtedness by Brunswick?

A. I think there were some occasions when we made inquiry and ascertained.

Q. What, if anything, did you learn at that time with respect to whether the interest was charged on a declining balance so that it was higher at the beginning of the period of indebtedness than it was at the end?

A. Yes, interest was applied to the unpaid balance.

Q. So that this hypothetical figure of $320 per year might in fact be something different every year during the eight-year contract, wouldn't it?

A. No.

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Q. And yet you say it was applied first to interest on the unpaid balance, and wasn't the unpaid balance being reduced?

A. Yes.

Q. And didn't that mean that the interest was reduced with each payment?

A. Well, this $320 is an average of what we paid over the eight years.

Q. Oh, it is an average.

So it doesn't apply to any particular time?

A. It is an average, that was your question before, it is an average of each year.

Q. Now, the Bowl-O-Mat companies had had some extensions of their indebtedness, have they not?

A. Yes, there were some occasions when that occurred.

Q. And if a Brunswick customer obtains an extension of indebtedness that changes its interest figure, average interest figure, doesn't it, from that time on?

A. Yes.

Q. Or it may, I wouldn't say it does, it may?

A. It would increase it.

Q. And have you any knowledge as to how many Brunswick customers there are today, that is, when I say "Brunswick customers" I mean people who in the past have

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purchased lanes and pinsetters from Brunswick; have you any knowledge as to how many of them have completely paid off their obligation and have no interest charge?

A. In 1972?

Q. Any time you wish.

A. No, I don't.

Q. Or '70, or 1968.

A. Yes—oh, excuse me, not on the overall. I was privy to some figures on some of the Brunswick—

Q. Some?

A. Yes.

Q. Now, as a matter of fact, the Bowl-O-Mat companies paid off their indebtedness to Brunswick in full in 1966, did they not?

A. They did.

Q. Did they have any interest expense after that?

A. Yes, sir.

Q. How did they incur that?

A. Well, in order to pay off Brunswick we had to borrow a million and a half dollars from different banks around the country, so we had to pay interest to the banks instead of to Brunswick.

Q. From the standpoint of a proprietor's cash need, as you put it, does it make any difference whether

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the proprietor owes X dollars to Brunswick or owes X dollars of interest to a bank or somebody else?

A. Yes.

Q. What's the difference?

A. It would depend upon the financing arrangement with the bank as contrasted to what the arrangement was with Brunswick.

Q. I am assuming it is the same number of dollars in each case, does it make any difference from the standpoint of cash need whether the proprietor owes $100 in interest to a bank or $100 in interest to Brunswick?

A. No.

Q. Now let's go from interest to depreciation.

You show here, I believe, a cost of equipment, this is new, I suppose, of $15,000 per lane, right?

A. Yes.

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Q. And you show depreciation of $15,000 for 15 years, coming out to $1,000 per lane per year, right?

A. Correct.

Q. Are there other ways of taking depreciation than to divide it into 15 annual installments?

A. Yes, this is a conservative approach.

Q. Well, regardless of whether it is conservative or not, are there other ways?

A. Yes.

• • •

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, addressing your attention again to plaintiff's Exhibit 1, what is the purpose of this, looking at the top title, Computation, Proprietor's Interest, Depreciation and Cash Need; what does it purport to show, in a general way?

A. Well, it shows the interest cost on the purchase of the pinsetter from Brunswick and the purchase of the bowling lane from Brunswick. It shows——

Q. Hold just to that line. Is that first line of the exhibit, after the words, "interest, pinsetters, lane,"——

A. Yes, it has the price of a pinsetter.

Q. That price is indicated as what?

A. $8,100.

Q. From where did you get that figure, $8100?

A. I know that is what we paid. And I know that is what Brunswick told me that they had to sell every pinsetter at because of their arrangements with

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CIT Corporation, which was financing for them these pinsetters.

The Court: Before we go any further, is it fair for this Court to assume that you cannot testify from your own recollection, and you need this to refresh your recollection with regard to the preparation of this instrument?

The Witness: I remember the $8100.

The Court: No, I am not talking about specific items, I am talking generally. You have to refer to it, do you not?

The Witness: Yes, sir.

The Court: All right. Proceed.

Mr. Hoffmann: I would like at this time to have marked as plaintiff's Exhibit 1B a document containing six sheets of paper stapled together and bearing on top the legend, "Brunswick Automatic Pinsetter Corporation," with an address, and an indication: Sold to Minneapolis Bowl-O-Mat.

(Exhibit P-1B marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 1B for identification and ask you if that is a copy of a document, the

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original of which was received by you?

A. Yes.

Q. And is that one of the documents used in putting the computations on plaintiff's Exhibit 1 for identification?

A. Yes, this is a bill from the Brunswick Automatic Pinsetter Corporation to——

The Court: May I have a copy?

Mr. Hoffmann: Sorry.

(Document handed to the Court.)

Q. Can you read from the top, please, what the bill is about.

A. Yes, it is a bill from the Brunswick Automatic Pinsetter Corporation to our Minneapolis Bowl-O-Mat for the 36 automatic pinsetters that we purchased from Brunswick in 1961 at a cost of $8100 per pinsetter, for a total cost of $291,600.

Q. And do you have other material of that type which supports the entry of $8100?

A. Yes.

Q. Now, Mr. Lieblich, coming back to plaintiff's 1 for identification, there is the next line that indicates a down payment on the pinsetter, is that right?

A. Yes.

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Q. And that amount is $500, is that correct?

A. Well, it's $18,000. But divide 18,000 by 36, that is $500 per machine, which was always the required down payment on all the pinsetters that Brunswick sold.

Q. You better explain that more slowly. Looking at plaintiff's Exhibit 1, that's the chart entitled, "Computation, Proprietor's Interest and Depreciation."

A. Yes.

Q. Under pinsetter you have a price of $8100, is that correct?

A. Yes.

Q. After that a down payment of $500. From what is that 500 derived?

A. Well, from our general experience, that was what it cost as a down payment on the Brunswick pinsetter. We paid $500 down for each pinsetter.

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Q. Now, then, the next line, $7600, is that correct?

A. Yes.

Q. What is that, sir?

A. Well, $7600 is the difference from the cost of $8100 and the down payment of $500. If you subtract $500 from $8100, it is $7600.

Q. That $7600 represents what?

A. That would be the unpaid cost of that pinsetter to Brunswick Corporation. We still owe them $7600 for each pinsetter.

Q. After you put down the 500?

A. That's right.

Q. Now, I see beneath that line a 23 percent interest factor. What does that represent?

A. Well, Brunswick was financing these pinsetters to the industry on an eight-year basis and—

Q. Pardon me. From what is your knowledge of that derived?

A. From our own experience, as well as the Brunswick documents that we have been able to look at since the trial began, or since our Complaint was filed. And this factor on the chart of 23 percent was the formula that Brunswick used to calculate interest at six percent per annum over an eight-

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year period.

Q. In other words, that is Brunswick's own calculation, not yours, is that correct?

A. Yes, sir.

Q. I see beneath that, you have the figure of $1748, what is that figure?

A. Well, if you multiply the $7600 that we owe for a pinsetter, and multiply it by 23 percent, which is the Brunswick interest calculation, that would come to $1748 of interest that would be added onto the contract that we had been paying for over a period of eight years.

Q. And then when you put the eight years alongside of it, you have the number beneath?

A. Yes, sir.

Q. What is going on there?

A. By dividing eight years into the interest of $1748, we determined that we would need $218 each year to pay the interest on the pinsetter.

Q. Now, that is $218 each year?

A. Yes, per machine.

Q. And what has been involved in getting that $218 in this last calculation is division, is it not?

A. Yes.

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Q. Was the division made by you?

A. Yes.

Q. Now, if you go to the next column, it is "Lane."

A. Yes.

Q. The first item is price, $2500. What is that derived from?

A. Well, that is from my general knowledge of Brunswick charges to our company and to others. The lanes varied a bit. The pinsetters were always fixed at $8100, but the lanes would vary by a few hundred dollars. Sometimes you would buy a little more equipment in one place than in another. But on the overall, it came to approximately $4500 per lane.

Q. And when you say from your own experience, you mean in purchases you had made of lanes from Brunswick, is that the meaning of that?

A. Yes, looking at other companies who purchased Brunswick equipment.

Q. And the next item, $900, which has after it in parenthesis, 20 percent. What is that figure? The line is "down payment" under "lanes."

A. Yes. The down payment on the pinsetters was always fixed at $500. But on the lanes there was more flexibility. I have down here a $900 down pay-

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ment, which is 20 percent of the $4500. And that is a conservative approach. Generally, we paid a little bit more down than other companies did. Sometimes people would come in and pay less than 20 percent down. If they did, there would have to be a higher calculation of interest charges.

But I used what I considered to be a conservative figure, which more or less corresponded to our own overall experience in the amount of our down payments to Brunswick.

Q. And that results in this $900 after down payment on the lane?

A. That is correct.

Q. And then you do the same thing you did on the other side, the pinsetters, subtract the 900 from the 4500?

A. Yes, sir.

Q. Giving you a balance of what?

A. Of $3600 that we would owe Brunswick on the lanes after the down payment of 20 percent or $900.

Q. I see the next line, called interest factor. Under "lane" you have an item of .1425 percent; what does that reflect?

A. Well, this, too, is Brunswick's formula for the calculation of interest over a five-year period.

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Brunswick was financing the lanes over a five-year period rather than eight years, as they were financing the pinsetters. So the interest factor was not 23 percent, but here it is .1425 for the five-year period. That's a six percent interest.

Q. Then you have now a new line below that, which is 513?

A. Yes.

Q. That is the result of your doing the arithmetic which gives .1425 percent of $3600, is that correct?

A. Yes, sir.

Q. Once again—now, you say you used the five years, dividing 513; why was that?

A. Because this was financed over a five-year period, so that each year the interest would be $102. We ran it out. It actually was $102.50. For simplification, we ran it out to $102.

Q. And you come out with a total factor for the lane of what?

A. Of $102 for the lane, $218 for the pinsetter interest, or a total of $320 per year, interest.

Q. That total is the interest paid by the proprietor to take care of his purchase of pinsetters and lanes from Brunswick, is that the meaning of the

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term?

A. Yes, sir.

The Court: After the fifth year that the lane isn't paid for, then you pay $218 interest for the next—

The Witness: Yes.

The Court: Let me ask you this, before you go any further. Suppose you keep the pinsetters for 10 years, 11 years. You save that interest on the third and fourth years, right, sir?

The Witness: No; after the eighth year there would be no further interest charge.

The Court: That's what I say.

The Witness: That is correct.

The Court: That accrues to the benefit of the holder of the pinsetters.

The Witness: Yes, after eight years.

The Court: What is the average life of a pinsetter, do you have any idea? Based on your experience, is it ten, twelve years?

The Witness: No, sir; it is more than that. It is a matter that is still not determined. Originally, we thought it would have a 15-year life. I hope now it will have a life

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of two years more than that.

The Court: A lane that's more than five years, does it not, Mr. Lieblich?

The Witness: Yes, sir.

The Court: Twenty years, right?

The Witness: Yes.

The Court: In some cases?

The Witness: That is correct.

The Court: All right. I was wondering what the five-year amortization——

The Witness: That's interest, sir, not depreciation.

The Court: I know. But I don't know why the interest is calculated over a five-year period.

The Witness: That was the financing contract they had offered.

The Court: All right.

By Mr. Hoffmann:

Q. Then going on, on the page, the next heading is depreciation.

A. Yes.

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Q. You described what depreciation was earlier in this; could you briefly state it again?

A. Well, I will go back to my adding machine. That cost $150. And when we purchase it we understand in ten years it will wear out and we have to buy a new one. So we are going to depreciate that $150 adding machine over ten years. That's $15 each year. So each year we would have a charge on our books of $15. Theoretically, at the end of the ten years we would save that money and now we can have the cash to buy a new adding machine.

Q. Here on your depreciation you have, I see, pinsetter with $8100.

A. Yes. That's the cost of the pinsetter, without interest charge.

Q. You derived that figure as you testified before?

A. That's our cost.

Q. And the lane, $4500.

A. That was the cost.

Q. Cost of the lane. And then there is a heading "Other, $2400." And in brackets "Carpet, signs, cash registers, bar, snack bar, intercom, safe," et cetera.

What is that designed to reflect?

A. Well, in our experience, as we opened up bowling

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centers, or looked at figures of centers that we bought, in addition to this cost for the pinsetter and the lane, there was additional equipment that had to be purchased. There was carpeting, there were signs, there was a cocktail lounge that had to be furnished. There was a snack bar. There was a safe. There were the cash registers. All in all, the cost of this additional equipment was approximately $2400 per lane.

So that we come up and have always worked on a formula of $15,000 being the total cost for each lane that we would install.

Q. That's the addition of the pinsetter price, the lane price, and the other prices, is that correct?

A. Yes, sir.

Q. In the line after that you say 15,000 for 15 years equals one thousand per lane per year. What does that mean?

A. This is the depreciation of this equipment that I have described over a basis of 15 years. If you divide 15 years into the $15,000 per lane, that comes to $1,000 per lane per year for depreciation.

Q. Why have you picked 15 years as your depreciation?

A. Well, we just didn't pick it, sir. It was a matter of a good deal of interest and concern on our part, and

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on the part of our national audit firm. When we first

became a public company we utilized the services of Lybrand, Ross Bros. & Montgomery, and they were our auditors for several years.

Initially, as a private company, our investors took depreciation for a much shorter period of time. There are important tax advantages for individuals if they use what we call a faster depreciation.

But once we became a public company we thought it very important to present to the public as proper and as careful and as conservative an approach as we could on our depreciation. And so, along with our auditors, we surveyed most all the other public companies in the bowling industry and ascertained from them what type of depreciation, how many years they were depreciating their equipment.

As a result of our inquiry and as a result of the inquiry of Lybrand, Ross Bros. & Montgomery, we determined in 1962 that a fair rate of depreciation, which is a composite—we recognized that the lanes would last for 25 years, perhaps, but the carpets, and the signs, and the cash registers, the snack bar, would wear out sooner than that. So this is what we call a composite figure.

All things considered, 15 years is appropriate for

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the depreciation of all of our equipment. And we followed that consistently. I think this is more or less in industry normal. Some people take a longer depreciation. But this, I believe, is conservative and reflects what most people do in the industry.

Q. Now, in these calculations there is a heading "Cash need." What is that designed to show?

A. This is to show the amount of cash that a proprietor would need in those years to pay off his equipment

obligation to Brunswick, had he purchased it on the basis that I have described, or is described in this exhibit.

With respect to the pinsetter, where there was an unpaid balance initially of $7600—

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Q. Pardon me. Where did you get that $7600 from?

A. That's the $8100 cost less the $500 down payment.

Q. Yes.

A. We would have owed Brunswick $7600. I have demonstrated the interest charge of $748. If we add the $7600 and the $748, that's a total of $9,348 [sic] that we would have to pay Brunswick over an eight-year period.

Q. And why do you say over an eight-year period, why eight years?

A. That was the life of the contract that was then being offered to proprietors. And that comes to $1,168 per year.

Q. That's by dividing 8 into the $9,348?

A. Yes. Now, the same elements were applied with the cash needed to honor the lane contract. The lanes that we assumed would cost $4500, we paid $900 down, there was an unpaid balance of $3600. The interest for the five-year period was $513. Adding them together there would be a total cost of $4,113 per lane, which should be paid for over a five-year period.

Dividing 5 into $4,113, we ran to a cost of $823. And adding together, then, the total cash needed for both the pinsetter and the lane, it approximately ran

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about $2,000 per lane, for five years. And then the last three years it would be reduced by $823, as the lane is paid off, and we would continue the payments on the pinsetters for the balance of the life of their contract.

The Court: To break it down further, on a monthly basis it would be one-twelfth of that amount for each month, right?

The Witness: Yes.

The Court: Let's stop just for a few minutes.
Ladies and gentlemen of the jury, a short recess.

(Short recess.)

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Q. Addressing your attention still to Plaintiff's Exhibit 1 for identification, can you tell us whether this computation would apply to an independent proprietor while he was in debt to Brunswick for this equipment?

A. Yes, this is the average of the payments of a proprietor over the number of years that he was in debt to Brunswick under the conditional sale contracts.

Q. Would it apply with equal force to the first year of his debt under the contract as it would under the last?

A. Yes, the only difference between the first year and eighth year would be the difference in the interest, once the lanes were paid off. Otherwise it is exact.

Q. In other words, the interest would vary at the point in time when the lane was paid off because the contracts vary; is that your testimony?

A. Yes.

Q. Explain that again.

A. One contract was for five years and the other was for eight.

Q. And the contract for five years was what?

A. On the lanes and the contract for pinsetters was eight years.

Q. Now, was all of this data inserted into the

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schedule by you, was it prepared by you?

A. Yes.

Q. And upon what basis was it all prepared?

A. My general knowledge and my experience in the bowling industry.

Q. To the extent you have testified about specific documentation, did that also support the exhibit?

A. Yes.

Q. That is to say, the price that is to be found in contracts, is it not?

A. Yes.

Q. Is there anything else that comes from specific knowledge that you have supported by documentation?

A. Just the depreciation, I have explained how we arrive at a——

Q. The interest factor, where does that come from?

A. The contract, purchase agreements.

Q. From Brunswick?

A. Yes.

Mr. Hoffmann: If your Honor please, I now offer Exhibit 1 into evidence.

The Court: Any objection?

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Mr. Seeley: Yes. May I have a short voir dire examination, your Honor?

The Court: Where you left off?

Mr. Seeley: No, I am respecting your Honor's ruling.

I have a question which goes to the manner in which this exhibit was prepared.

The Court: I will permit it.

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. You said, Mr. Lieblich, that the figures on Plaintiff's Exhibit 1 represent the average cash needs of Brunswick's customers; did I understand that correctly? During the period that they were purchasing this equipment.

A. No, I didn't mean to say—that would be the exact cash need each year as the contracts were being paid.

Q. And did you——

A. Excuse me——

Q. I'm sorry, I didn't mean to interrupt you.

Please go ahead.

A. The interest was averaged over the years.

Q. Did you make any effort to verify what the actual interest payments of Brunswick's customers were

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as compared to what you have shown on Plaintiff's Exhibit 1?

A. Well, Brunswick's records, which were given to us, support the figures that I have down here.

Q. What records are those, sir?

A. There were a memoranda of the Brunswick Corporation, our attorneys gave to me after he received them from you, Mr. Seeley, which set forth this 23 per cent interest factor and all of the other factors on the interest calculations.

Q. But did you examine the actual cash needs of actual Brunswick customers at any period of time in making up Plaintiff's Exhibit 1?

A. I knew what our cash needs were. They automatically flow from the cost that I have set forth in the top part of the exhibit.

Q. Anybody else's?

A. Sir?

Q. Did you check anybody else's, any other customers?

A. As we purchased or sought to purchase other bowling centers, and I examined their books, I found essentially the same figures on their books.

Q. Do you have any of such records here in the courtroom?

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A. No.

Mr. Seeley: Your Honor, the defendant objects to Plaintiff's Exhibit 1 on the ground that it relates to a hypothetical purchaser of equipment from Brunswick who is not shown to correspond to one or two or one hundred or any other number of real Brunswick customers during the period we are involved in in this lawsuit, which I take it is from 1965 to the present date.

And in absence of such correspondence to reality we object to it on the ground that the hypothesis is irrelevant and misleading.

Mr. Hoffmann: Your Honor, in face of Mr. Seeley's voir dire, I would like to address the witness' attention to some of the supporting material which was used in order to show that quite to the contrary, that it is based on information which was supplied from the Brunswick company to the Bowl-O-Mat company.

The Court: In other words, you're asking me to reopen the direct examination——

Mr. Hoffmann: What I'm asking is that I be permitted a few more questions on direct before submitting or offering the exhibit into evidence.

The Court: Do you want to be heard on that?

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Mr. Seeley: No, I'm not trying to limit counsel's examination. If he can authenticate this he has a right to.

The Court: I don't know whether he has a right to or not, but I think it lies within the discretion of the Court as to whether or not to permit him to pursue it.

I will permit it.

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. I address your attention to 1-B, which has been marked for identification.

This is the document which you looked at before?

A. Yes.

Q. This shows a price for the automatic pinsetters, does it not?

A. Correct, yes.

Q. And in this regard there are several Brunswick invoices, are there not, documents relating to it?

A. Yes, it is a bill from the Brunswick Automatic Pinsetter Corporation for 36 lanes at $8100 apiece, with an interest charge which is 23 per cent of the balance owing, and it shows also the required down payment of $500 per machine.

Q. Now——

[200]

The Court: I may be wrong, I think you said for 36 lanes. You mean 36 pinsetters?

The Witness: That's right.

The Court: All right.

Mr. Hoffmann: If your Honor please, I'd like to have Miss Costello mark as Plaintiff's Exhibit 2 for identification a document bearing the legend on top "Uniform operating procedure, automatic pinsetter order, RB-310."

(Exhibit P-2 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as Plaintiff's 2 for identification and I ask you if you can tell us what it is?

A. Yes, this is something you showed me some time ago, Mr. Hoffmann, and after you received it from the Brunswick company under your discovery or inquiry before trial.

Q. Would you be good enough to read the legend on top?

A. It says "Automatic uniform operating procedures, automatic pinsetter orders."

Mr. Hoffmann: May I, I will read the first item:

"The objective of this procedure is to outline the requirements for automatic pinsetter

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orders insofar as freight and drayage, cash payment, trade-in, finance charge, deferred payment terms, and discounts are concerned."

Q. Now I ask you to drop your eyes, please, to Item 5 on Plaintiff's Exhibit 2 for identification.

Do you see that, sir?

A. Yes.

Q. What does it say?

A. It says that the minimum cash payment required for the sale of automatic pinsetters is $500 per pinsetter plus sales tax.

Q. Does that correspond in any way with an entry made on Plaintiff's Exhibit 1 for identification for down payment?

A. Yes, it is the same, $500.

Q. Do you see anything else on Plaintiff's Exhibit 2 for identification which came from Brunswick which supports the entries made on Plaintiff's Exhibit 1 for identification?

A. Well, we show an interest factor of 23 per cent, in this bulletin they have 26 per cent, which is a little bit higher.

Q. That's under Item 7?

A. That's right.

Q. And you described your entry as 23 per cent

[202]

as being conservative, did you not, before?

A. Yes, because ours is based on 6 per cent interest.

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Q. And if you had used 26 percent, which is found in item 7 of the Brunswick uniform operating procedure for automatic pinsetters, you would have had a higher interest charge; is that not so?

A. It would have increased the annual charge of interest and annual cash need.

Q. Mr. Lieblich, do you see on plaintiff's 2 for identification, do you see the date given anywhere?

A. It is July 15, 1958.

Q. Now, sir, can you tell us looking again at plaintiff's 1 for identification, if there are any items remaining on that exhibit which do not find support in the records ex-

amined by you coming from Brunswick other than sheer calculations of arithmetic?

A. Well, the $8100 cost is in here on the second page. This doesn't refer to lanes, this just refers to pinsetters.

Q. Now, you were testifying earlier, I'm not referring only to Exhibit 2 for identification, you were testifying earlier that the lane for $4500 was supported by the contract; is that not so?

A. Yes, approximately our average cost.

Some varied, some a little less, and some a little more.

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Q. Please attend to me carefully.

Would you look at plaintiff's 1 for identification?

A. Yes.

Q. I repeat my question: Do you see anything there which is not supported by records coming from Brunswick other than mathematical calculations?

A. That's correct, depreciation.

Q. And as to that, you had your testimony as to the accounting methods which were used?

A. Yes.

Q. Anything else, sir?

A. No.

Mr. Hoffmann: I offer Exhibit 1.

The Court: Same objection?

Mr. Seeley: Objection, with this elaboration, your Honor: that the supposed support for the exhibit now offered consists of one contract entered into in 1961 and one bulletin apparently from Brunswick credit department in 1958, which I think underscores the fact that there has been no showing here that these figures have any relationship to a real Brunswick customer during the period 1965 to 1972.

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The Court: Over the objection of defendant, into evidence.

(Exhibit P-1 received and marked in evidence.)

Mr. Hoffmann: I'd like to ask the witness some questions concerning Exhibit 1-A for identification.

Q. Do you have a copy of 1-A for identification, Mr. Lieblich?

A. Yes.

Q. Looking at the title, "Charges for determination of net income by Brunswick and by Brunswick's customers," what is this document?

Perhaps before I even come to that, sir—

A. Pardon me? Did you say 1-A?

Q. Yes.

A. I don't have it.

Q. Is this document prepared by you?

A. Yes.

Q. Can you tell us what it is, what is it designed to show?

A. Well, it is charges for the determination of net income by Brunswick and by Brunswick's customers.

Q. Looking first on the heading below, it

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is Brunswick's customers; is that right?

A. Yes.

Q. And you start with depreciation.

You testified about what depreciation is in connection with 1 in evidence. That $8100 figure, that's the pinsetter price; is that right?

A. Yes.

Q. And the lane, 4500?

A. Yes.

Q. The other, does that correspond to the other you have on 1, that is to say, carpets, signs, cash registers, and so forth?

A. Yes.

Q. That is item what?

A. $2400.

Q. What have you done here with depreciation?

A. We have divided the 15,000 cost——

Q. Pardon me. How did you get 15,000?

A. Same as on the other exhibit, it is an addition of the pinsetter cost of $8100, the lane cost of $4500, and all the other costs of $2400, adding together it is 15,000.

Q. And then the next line is a statement, is it not?

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A. Yes.

Q. And would you please tell us what that says?

A. It says, "The composite useful life of this equipment is 15 years."

Q. What does that mean?

A. As I explained before, that some of our equipment will last for more than 15 years, but some for less than 15 years, and so our national auditors and our accounting department determined that we'd use this composite of 15 years for all of the equipment, so we have divided the 15,000 cost by the 15 years and that comes to an annual charge of depreciation of $1,000 per lane per year.

So when I use the word, "lane," I have described the word lane and pinsetter.

Q. That is a charge that is called an annual depreciation charge?

A. Yes.

Q. And now, what have you done with the next heading, "interest"?

A. Well, the next heading is an additional expense that the proprietor has, and we had, and that's interest on the equipment which we were purchasing on the conditional sale contracts.

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Q. And do those items which reflect your interest charges, are those the same as described in detail on plaintiff's Exhibit 1?

A. Yes.

Q. That is to say, the interest per year on the pinsetter is reached in the same way?

A. Yes, it is the same figure of $218 per year interest on the pinsetter and the same figure of $102 per year on the lanes, for a total annual interest charge each year of $320 per year per lane.

Q. Then you have added them together for a total of $1,320?

A. Yes.

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Q. What is that, sir, it is called Brunswick's customers on top, and then at the bottom, total charges, $1320 per year?

A. That would be the total cost to the proprietor, such as the Bowl-O-Mat companies, would have on their books each year for depreciation and interest on a per lane basis.

Q. And that heading below is entitled "Brunswick"?

A. Yes.

Q. Would you tell us what you have done with that; what have you put there?

A. There are two categories, one is Brunswick's depreciation, and one is Brunswick's interest.

For Brunswick's interest we have zero, that's because in our pretrial inquiry, in the depositions of Brunswick, the

Chairman of the Board, and the president, at the prior trial, they testified there was no interest charged to the individual operations.

The other Brunswick cost, we have depreciation of $500 per year. We arrive at that $500 by, I recall it was done by some of the lawyers in your office, Mr. Hoffmann, while I was sitting there, they divided the total number of lanes that Brunswick was operating based on their reports to us by the total depreciation that the

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Brunswick figures reflected, and came to just about $500 per lane for depreciation.

* * *

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, would you take a look at 1-A and tell us what the first part under "Brunswick's customers" represents?

A. The first part of the exhibit, Brunswick's customers, on this 1-A, is taken from Exhibit 1.

Q. Can you show us how that's done, Mr. Lieblich, with the pointer, perhaps?

A. On the first half of this exhibit we show depreciation for Brunswick's customers. This is depreciation that I talked about yesterday, being the result of the cost of each pinsetter of $8100, the cost of each lane of $4500, and the cost of all of the other equipment that went into the bowling center per lane, that is, the carpet, signs, cash registers, bar equipment, snack bar equipment, everything else, which totals approximately $2400 per lane.

The total cost of equipping each lane in the center was $15,000. If it was a 48-lane center it would be $600,000, but it would be $15,000 per lane.

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Q. Then we talked about the depreciation, for 15 years. Dividing 15 years into $15,000, the depreciation is $1,000 per lane.

The next category of 1A is the interest charged to the Brunswick customers. And that comes from this tabulation here.

As I said yesterday, the cost of the pinsetter was $8100. We paid a down payment of $500, which left an unpaid balance of $7,600 for each one of our pinsetters.

Since we were financing over an eight-year period, Brunswick's interest formula was 23 percent, totalling for the eight years $1,748 of interest for each pinsetter.

Dividing 1748 by eight years, that would total $218 for each of eight years for interest on the pinsetter.

The same arithmetic is applied to the lanes. There each of the bowling lanes cost $4500 with a 20 percent down payment of $900, unpaid balance of $3,600.

This was financed over a five-year contract, Brunswick's interest formula, .1425, or $513 interest for the five years.

Dividing $513 by five years, that's a

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total of $102 for each year.

Adding together the interest on the pinsetter of $218, the interest on the lane of $102, we have a total interest charge of $320 per year based on six percent interest.

Those, sir, are the calculations of the first part of the sheet.

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Q. Now, Mr. Lieblich, looking at Plaintiff's Exhibit 1-A for identification, is the material found on Plaintiff's 1 in evidence the material which constitutes the first part of the page under the heading "Brunswick's customers"?

A. Yes.

Q. And that material was based upon the records that you described yesterday in your testimony in connection with Plaintiff's Exhibit 1 in evidence; is that right?

A. Yes.

Q. Now, would you look farther down on the page to a heading "Brunswick"?

A. Yes.

Q. And would you read the first line——

A. There are just two entries, the first is "Depreciation, $500 a year," the next entry is "Interest, zero per year."

Q. Tell us the basis for your having posted depreciation for $500 a year?

A. Yes. That came from the records which Brunswick Corporation supplied to you, Mr. Hoffmann, and which you then turned over to our office so we could study them and complete our analysis.

That depreciation of $500 per year is the average

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of the Brunswick cost of depreciation on their books in their BCOD division.

Q. When you speak of the records you mean the records relating to the BCOD centers?

A. Yes.

Q. Perhaps you could describe what the initials BCOD mean.

A. BCOD stands for Brunswick Corporation Operating Division.

In 1965 when Brunswick began to repossess bowling centers around the country they set up this division, and all of the centers which they operate were part of that division.

You gave me, Mr. Hoffmann, after you received it from Brunswick, the profit and loss statements for each of those operations for every year from 1965 through 1972.

Q. Now, Mr. Lieblich, would you be good enough to look at the interest line, it indicates interest is not charged, is that correct, zero per year?

A. Yes.

Q. Can you tell us the basis for making that entry on the exhibit for identification?

A. Yes, sir. I was in Chicago with you some years ago when you took the depositions of the Chairman of the Board and the president of Brunswick Corporation and some

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of their other executives, and they all said that Brunswick did not charge any interest, they all said that there were no interest charges from the BCOD's to Brunswick itself.

And as we examined the records of the BCOD centers that you gave me we do not find an interest charge there to the parent company for monies advanced.

Q. Were those records of the kind of profit and loss statements and the like that you examined, the Brunswick records?

A. Yes.

Q. Those were records for the Brunswick centers?

A. Yes.

Q. BCOD centers; is that right?

A. Yes, they are Brunswick records.

Q. Then you have the next line, which is Total Charges Under Brunswick; what does that reflect?

A. That's a total of the depreciation of $500 per year and zero for interest, adding 500 and zero, that's $500.

Q. If you'd be good enough to turn the page, from 1A to page 2, you have a heading "Cash Need for Each Line Operated by Brunswick and by Brunswick's Customers."

First, what is the purpose of this; what is this designed to show?

A. This is to show that a comparison between the cash

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that is needed by the independent proprietor, such as ourselves, to pay the contracts to Brunswick, and the cash needed by the centers that Brunswick took over and began to operate themselves.

Q. And under Brunswick's Customers there are the two columns of figures for pinsetter and lane. Was this prepared by you, sir?

A. Yes.

Q. And tell me the records which underlie this, are these the same as the records which are to be found on Plaintiff's Exhibit 1 in evidence?

A. They are identical.

Q. What it amounts to is a runoff, is that right, of the previous exhibit?

A. Yes.

Q. And then after you have lines which show under "Pinsetter" at the bottom $1,168, and under "Lane" $823, you have a statement, for a total of $1,991 or $2,000 per lane.

Tell us, sir, what is meant by that statement; what does that total mean?

A. The total of $2,000 per lane is the amount that the Brunswick customer would have to pay each year to pay in full its contracts for the pinsetter and for the bowling lane.

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Q. And that total is simply a capitulation of the numbers that are on the page, isn't that so?

A. Yes, it is.

Q. And with the evidence underlying it, described in connection with Exhibit 1, is that correct?

A. Yes, they are the same basic figures.

Q. Then on the bottom you have one more line, Brunswick, and beneath that, cash need, zero dollars?

A. Yes.

Q. Will you explain what that means, sir?

A. Yes, sir; that means that the Brunswick-operated centers-, the BCOD centers, needed no cash at all to pay Brunswick itself.

Q. And when you say pay it yourself, do you mean for the two categories described in the exhibit, that's pinsetters and lanes?

A. Yes, sir; they had no obligation on their equipment debt.

Mr. Hoffmann: Thank you very much. I offer it in evidence.

The Court: When you say that, you mean BCOD Divisions.

The Witness: Yes, sir; each operator.

The Court: To the Brunswick Corporation.

The Witness: Yes, sir.

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Mr. Hoffmann: Now, if your Honor please, I offer it in evidence.

The Court: Mr. Seeley.

VOIR DIRE EXAMINATION.

By Mr. Seeley:

Q. Mr. Lieblich, the caption of the first page of plaintiff's Exhibit 1A reads, "Charges for determination of net income by Brunswick," I will stop there. Do not those words in your mind refer to Brunswick's net income?

A. No, sir; it is BCOD centers.

Q. Then the caption does not correctly express what the exhibit is intended to show, does it?

A. Yes, it does, sir. We are only talking about the BCOD centers here.

Q. What you are talking about, and what is on the exhibit, may be two different things. Is it not true that this exhibit says on its caption that it is talking about the net income of Brunswick, but that you say in your explanation: Oh, no, you are only talking about net income for the BCO Division?

A. That is not true, Mr. Seeley.

Q. I will make it shorter. Is it not true that this caption says, "Charges for determination of net income by Brunswick"?

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A. Yes.

Q. And is it not true that nowhere on this exhibit is anything said about BCO?

A. That is all that we are talking about, sir.

Mr. Seeley: I move that the answer be stricken as not responsive.

Mr. Hoffmann: Your Honor, I ask that it not be stricken, but that both the question and the answer be stricken as argumentative.

The Court: No, the answer will be stricken and the jury is instructed to ignore it.

Read the question.

(Question read as follows:

"And is it not true that nowhere on this exhibit is anything said about BCO?")

A. That is correct.

Q. Going down to the bottom of the first page of 1A, in the middle of the page, the word, "Brunswick" appears, does it not?

A. Yes, it does.

Q. And on the left-hand column, the second line, appears the word, "interest," right?

A. Yes, sir.

Q. And opposite that appears the figure zero per year, is that right?

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A. That's correct.

Q. Does Brunswick have zero expense per year for interest?

A. BCOD does have zero expense.

Mr. Seeley: I move to strike that as not responsive.

The Court: So ordered.

Mr. Seeley: Do you remember the question?

The Witness: Would you repeat it, please.

(Question read as follows:

"Does Brunswick have zero expense per year for interest?")

A. You mean Brunswick Corporation?

Q. I do, sir.

A. I am sure they must have interest expense. I am sure they must borrow money for acquisitions, and working capital, and many things.

Q. Do you actually know what they have borrowed money for, and how much they have borrowed, or how much their interest expense is?

A. No. I did see their annual reports in prior years. I know there must be an expense for interest.

Q. On the second page of Exhibit 1A, on the bottom of the page appears the word, "Brunswick," does it not?

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A. Yes.

Q. And it says under that, "Cash needs, zero"?

A. Yes, sir.

Q. Is that intended to convey again the idea that Brunswick has no cash need for interest expense?

A. This has nothing to do with interest. The caption on the top of the page says, "Cash need for each lane operated by Brunswick." We are not talking about the operation of lanes by BCO.

Q. The first part of the exhibit deals with Brunswick customers, does it not?

A. Yes, it does.

Q. And there, there is an item for interest, is there not?

A. On pinsetters and on lanes, yes.

Q. Why is it, then, that when you get down to Brunswick, cash need, zero, you say that doesn't have anything to do with interest?

A. Because Brunswick—BCOD—makes no payments of any type to Brunswick for equipment obligations.

Q. Is BCO different from Brunswick, is it a different legal person or is it the same person?

The Court: If you know.

A. I imagine it is a division, as our company is a

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division. Many public companies have divisions.

Mr. Seeley: I move that be stricken as not responsive.

The Court: Repeat the answer.

(Record read.)

The Court: I order it stricken. The jury is instructed to ignore it.

Mr. Seeley: Do you remember the question?

The Witness: Will you read it, please?

(Question read as follows:

"Is BCO different from Brunswick, is it a different legal person or is it the same person?")

Mr. Hoffmann: I object to the question, your Honor.

The Court: Why?

Mr. Hoffmann: On the ground that it calls for a legal conclusion concerning a subject matter as to

which there is no foundation in the evidence that this witness has any knowledge whatsoever.

The Court: The Court added something to it before: If he knows.

The Witness: Well, there are two questions that you asked. Will you repeat it?

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The Court: Overruled, Mr. Hoffmann, for the record.

The Witness: I will answer one at a time, if I may.

The Court: What is the answer to the first one?

The Witness: Will you repeat the first part?

(Question read as follows:

"Is BCO different from Brunswick, is it a different legal person or is it the same person?")

A. The first part, I think I can say: Yes, it is different from Brunswick.

Q. It is part of Brunswick?

A. No, the question was: Is BCO different from Brunswick? And I answer that: Yes, it is different.

Q. I understand.

A. The second question—sir, would you read it?

(Question read as follows:

"Is it a different legal person or is it the same person?")

A. My answer to that would be: I don't know.

• • •

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Mr. Hoffmann: • • • And nowhere is it indicated that there is anything wrong with the calculations here. They have nowhere themselves asserted any interest charge.

The Court: Do you have Exhibit P-1-A in front of you, Mr. Witness?

The Witness: Yes, sir.

The Court: Referring to page 2, does that refer to operations between BCO division and the Brunswick Corp[illegible]tion, also?

The Witness: Yes, sir; operated by Brunswick. That means BCO.

The Court: It means BCO, but it doesn't say it.

The Witness: It says operated by Brunswick.

The Court: Ladies and gentlemen of the jury, I made a ruling without your presence whereby I admitted this into evidence. I now amend that ruling, Mr. Hoffmann, that there will be a legend put on this exhibit that the figures relate to the BCO division and the Brunswick Corporation, or words to that effect.

If you two counsel cannot agree on a legend of that kind, then this Court will enter into it. So ordered.

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, before we discusssed exhibits in the courtroom, you had been describing the parent operation,

Treadway, and I now come back to the specific bowling centers which were, according to your testimony, owned and operated by the plaintiffs in this case. The first of these that I want to ask you questions about is Pueblo. Can you tell us the name of that center?

A. Pueblo Bowl-O-Mat, Inc.

Q. And Pueblo Bowl-O-Mat is located in what town?

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A. In the City of Pueblo, Colorado.

Q. Can you tell us, of your knowledge, whether there are any other bowling centers located in Pueblo, Colorado?

A. Yes, there are.

Q. Would you describe such centers as may have existed in Pueblo at the time when Bowl-O-Mat first entered into a contract for bowling in Pueblo?

The Court: Before you answer that, when did that happen?

The Witness: In 1960.

The Court: With Brunswick?

The Witness: Yes, sir.

A. (Continuing.) At that time there was then in being at Pueblo a ten-lane center called Park Lanes, a 12-lane center called Payne's Lanes, and a 32-lane center called Bowlero. Those are the only centers in being in 1960.

Q. Did that situation change over the years?

A. With one addition. In August of 1962 another center, equipped with Brunswick equipment, opened in Pueblo, called Belmont Lanes.

• • •

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Q. Mr. Lieblich, could you describe for us, please, the circumstances under which Bowl-O-Mat went in to open up a center in Pueblo, Colorado?

The Court: Mr. Witness, just answer the question now.

A. Several months just prior to March 1960 I was in Denver, Colorado, looking at a new site which Brunswick had brought to my attention in Denver.

While there I conferred with Mr. Arthur Covert, who was the Brunswick branch manager for the Denver area, and with a real estate man called Harold Rogers.

After a few days in Denver we did not proceed with that installation, but Mr. Covert said he would call me if another installation came about in Colorado.

A few months after this meeting in Denver I received

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a telephone call in my office in Paterson from Mr. Covert, and at the same time Mr. Rogers was in his office, and I believe participated in the conversation. And Mr. Covert said that Brunswick had an excellent location for us in Pueblo, Colorado, which was just about to start construction, and he was very anxious to come to Paterson with the principals and see what could be done so that we would lease the building, which was then about ready to be constructed, and purchase the Brunswick equipment.

And I said "Certainly."

And a day or two later Mr. Covert flew into Paterson with Mr. Rogers, and another two gentlemen, one was Mr. Harrington, and a Mr. Stackhouse.

We conferred in my offices, my law offices, in Paterson. Mr. Stackhouse and Mr. Harrington were the gentle-

men who were putting up the building and who had intended to operate the bowling center as well, and to purchase the lanes and equipment from Brunswick.

As Mr. Covert said to me then, they didn't have the funds to construct the building and also to buy all of the equipment from Brunswick, and they were desirous of becoming landlords and renting the building to us if we would purchase the equipment from Brunswick and operate the center ourselves.

I asked Mr. Covert, the Brunswick branch manager,

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what kind of an area Pueblo was, and he said that in all of his years of experience with Brunswick he didn't know any community in the United States that needed a bowling center more than Pueblo. There were 40 lanes to go into this building.

He assured me that 17,000 lines per lane, which was an excellent volume of business, could be enjoyed by us in the operation of the 40-lane center in Pueblo.

We negotiated further, and Mr. Harrington and Mr. Stackhouse asked for a rather high rent for the building they were going to complete.

When they told me what the rental was I said it was the highest rental—

Mr. Seeley: I object to the conversation unless it was in the presence of some Brunswick representative.

The Court: Yes. Try to stay away from the hearsay area.

Objection sustained.

A. Mr. Covert was present during all these negotiations in my office.

They asked for this rent that I thought was very high, and then I said to Mr. Covert, "Would you step out in the hall with me?"

And Mr. Covert and I went out into the hall, and I

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expressed to Mr. Covert my concern about this high rent, and he said, "Dan, you won't make a mistake because I know you will do 17,000 lines per lane, you can well afford the additional rental."

I went back in then and continued the discussions with Mr. Harrington and Mr. Stackhouse, and though I had never been to Pueblo in my life, Mr. Covert said he would—I said, "I want to come out to Pueblo and look at it," but nonetheless Mr. Covert said he had or would have the area surveyed for me to support what he said.

And right then and there I shook hands in my office with Mr. Harrington and Mr. Stackhouse on the lease arrangement, it was later reduced to writing, but I shook hands, nevertheless, on what the arrangement would be, and also on the Brunswick arrangements.

Then I went out to Pueblo a few weeks later and received from Mr. Covert a Brunswick survey, the Brunswick survey, and looked at the site. And I visited other centers in the area that Mr. Covert had told me were there when he gave reasons why we would do so well.

And then the lease was prepared as we had shaken hands.

We bought from Brunswick the almost $600,000 worth of equipment for the center, and on or about August 1 of 1960 we opened for business.

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Mr. Hoffmann: I'd like to have marked as Plaintiff's Exhibit 3 for identification the area analysis for

Pueblo, Colorado, Pueblo County, Colorado, and an area analysis entitled "Pueblo, Colorado," previously marked at a deposition as—the first as Plaintiff's 275 for identification, and the second as Plaintiff's 273 for identification.

(Exhibits P-3 and P-4 marked for identification.)

Mr. Hoffmann: May we go off the record for a minute?

(Discussion off the record.)

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's Exhibit 3 for identification only, and I ask you if you can tell us what that is?

A. Yes. This was the area analysis of Pueblo, Colorado, that I received from Brunswick company in the spring of 1960.

Q. In respect of P-3 for identification, is this the document to which you just referred in your testimony?

A. Yes.

Q. I show you now P-4 for identification. Will you please describe that for us?

A. Yes. This was a supplement to the area analysis that I received first from Brunswick Corporation.

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Q. In both instances do you remember having received these documents that are originals, of which these may be copies?

A. Yes, sir.

Q. And did you receive them——

The Court: I don't think the jury can hear you. Can you members of the jury hear him?

Juror No. 6: No.

The Court: When you stand so close to him, there is a tendency to keep your voice down.

Q. If you please, Mr. Lieblich, the documents you have in your hand, Plaintiff's Exhibits 3 and 4 for identification, either those or the originals represented by copies, were received by you; is that your testimony?

A. Yes.

Q. And were they received prior to your undertaking to open a center in Pueblo, Colorado?

A. Yes.

Q. Is there anything in either of those documents which played any substantial role in your decision—in your reaching the decision to open in Pueblo?

A. Yes.

Q. Can you call that to our attention, please?

A. On the last page——

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Mr. Seeley: If the Court please, I think we are a little ahead of ourselves. It hasn't been offered in evidence yet. Now he is getting into the contents of it.

The Court: Why should I permit him to read from it? I will sustain the objection.

Ask him the next question.

Mr. Hoffmann: I will offer the documents into evidence, your Honor, at this time. The witness has identified them as received by him and as their playing a role in his deliberation in opening a center.

The Court: And from a representative of the defendant Brunswick company?

The Witness: Yes.

The Court: Any objection?

Mr. Seeley: My objection is the same as I made at side bar.

The Court: Relevancy?

Mr. Seeley: Right.

The Court: Into evidence.

Mr. Seeley: And prejudicial.

The Court: All right. Into evidence.

(Exhibits P-3 and P-4 received and marked in evidence.)

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Q. Now, I show you Exhibits in evidence Plaintiff's 3 and Plaintiff's 4, and I ask you if you can to identify those parts of any of those exhibits which played some substantial role in your decision to open a center in Pueblo, Colorado.

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The Court: Which one are you referring to when you ask?

Mr. Hoffmann: First to plaintiff's 3.

A. Well, in P-3, on the last page, under the summary in the third paragraph—or second paragraph, it says:

"For 113 years Brunswick Corporation has been instrumental in the planning and building of thousands of recreation centers throughout the world. This experience well qualifies us for judging the merit of such an operation as proposed. Our diligence is constantly exerted to keeping the bowling industry

prosperous. The welfare of the proprietor is as much a factor to success as is our own.

"It would only be prudent to assume from the foregoing text that Pueblo can accommodate 50 more lanes of modern styling, combining the utmost comfort and convenience that the bowling business can offer."

Now, since we had contemplated 40 lanes, Brunswick's judgment that 50 lanes could be put in was a great deal of comfort to us.

Secondly, and the reason for the supplemental report on that, on P-3, there is my handwriting, "Write to Brunswick," and I wrote to Brunswick to get a more detailed report on the population.

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And in the supplemental report—

The Court: Wait a minute, now. You just answer the questions.

I won't permit that.

What's the next question?

Q. Is there anything else to which you wish to refer in plaintiffs' 3 which you feel played some substantial role towards your opening of a center in Pueblo?

A. Not comment and summary of P-3 was certainly very important to me.

Q. Now, will you look at plaintiffs' 4 in evidence?

A. Yes.

Q. I ask you the same question.

A. Yes. This one concerned itself with the population aspects of Pueblo, and the surrounding areas.

And on page 7 there was one paragraph of very great significance to me or to anyone in the bowling business.

On page 7 it says:

"In Pueblo we have a ratio of one alley bed per approximately 2,400 people. Compared with the accepted national ratio of one bed per every 1,000 people, it becomes immediately apparent that there

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is an apparent need for more bowling facilities in this area."

Q. Do you know whether or not there was anything wrong about the statement, "In Pueblo we have a ratio of one alley bed per approximately 2400 people?"

The Court: Answer that yes or no.

A. Yes.

Q. What is the basis for your knowledge?

A. Some years later I learned that the population figures that Brunswick had furnished us were not correct.

Q. How did you learn that?

A. After the center opened and the results were so terribly unsatisfactory I went out to Pueblo myself and visited with the Chamber of Commerce and with some of my people out there. We ascertained that the true population of Pueblo was considerably different than that which Brunswick had set it forth in this analysis.

Mr. Seeley: I move that that be stricken. It is his conclusion and summary of apparently a conversation taking place with an unidentified person outside the presence of any Brunswick person.

The Court: Why not, Mr. Hoffmann?

Mr. Hoffmann: I intend to withdraw

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the answer.

The Court: In the meantime it will be stricken and the jury will be instructed to ignore it entirely.

Q. With whom did you have a conversation concerning the subject matter at the time you went to Pueblo?

A. I don't recall the gentlemen's name at the Chamber of Commerce with whom I spoke in 1962. I spoke also with the publisher of the local newspaper, with the president of the largest bank in Pueblo, with the mayor of the City of Pueblo, with the City Assessor of Pueblo County, and of course with the Brunswick people. Several Brunswick representatives were in Pueblo with me.

Q. Limit yourself, if you will, please, to the conversation with Brunswick people—

The Court: Or reference to the officials he spoke to, the mayor and the assessor, et cetera, will be stricken on the Court's motion, and the jury will be instructed to ignore it.

Q. Did you have a conversation with the Brunswick people concerning the accuracy of the Brunswick area and analysis which was contained in plaintiffs' Exhibit 4?

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A. Yes.

Q. Tell us about that, if you will, please; identify who you were speaking with and where the conversation took place.

A. Yes.

The Court: And when?

Q. And when.

A. It was in February of 1962, and Mr. Blanks, Bill Blanks sitting over there, was in Pueblo at that time.

When I returned from my visit to Pueblo, I spoke with Mr. Milton Rudo, who was the president of the Bowling Division of Brunswick, and I made him aware of my findings.

Q. Did Mr. Rudo speak to you in this connection?

A. Yes.

Q. Concerning the subject matter?

A. Yes.

Q. And can you tell us what he said to you?

A. Well, he didn't—when I presented the figures that I had obtained and I told him that I had learned also that part of the population that Brunswick had there were inmates in an insane asylum, about three or four thousand people, he made no comment about it.

Mr. Seeley: I move that that be stricken.

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There is no evidence—

The Court: So ordered, and the jury is instructed to ignore it.

• • •

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, do you have occasion to go from time to time to Pueblo, Colorado?

A. Yes.

Q. And have you been doing so since your Pueblo center opened in 1960?

A. Yes.

Q. Can you tell us, do you travel back and forth to Pueblo more than once a year?

A. It depends. In recent years I haven't traveled there as much as I did in prior years.

Q. In prior years did you do so?

A. Yes, sir.

Q. And in your traveling to and from Pueblo, do you have occasion to see the centers, other than Pueblo Bowl-O-Mat, located in Pueblo, Colorado?

A. Yes.

Mr. Hoffmann: I would like to have a street map of Pueblo marked, please, as P-5. And I understand that there is no objection. Perhaps we can mark it directly in evidence.

• • •

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The Court: • • •

Q. Can you, Mr. Lieblich, referring to the street map of Pueblo, point out, for the sake of those here, where these various centers are?

A. We have a 40-lane center in the Sunset Plaza shopping center. I am pointing on the map to the general area in which it is located.

The Court: Do you have a red pencil? Maybe we ought to circle it.

Mr. Hoffmann: This is a dark color, but I think it might work.

The Court: That's all right.

A. (Continuing.) I am putting a mark in green. We

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are located right across the street from the State Fair grounds. It is on the intersection of Northern Boulevard and Western Avenue, I believe. I have a green mark to indicate its approximate location.

Q. And will you point out the other centers that you have seen in Pueblo?

A. Yes. As we drive downtown, right next to the river, the Arkansas River that flows through the center of Pueblo, a large shopping center was built on the former dry bed, and in that shopping center, in a downstairs location, is the Bowlero Lanes of 32 lanes. And I have marked that with a Y.

Q. Now, sir, have you designated all of them?

A. No, sir. There are two others fairly close to our 40-lane center. I am going to make a Z. There is a 12-lane center called Payne's Lanes. And that's right here on the map, (indicating).

Also downtown on Main Street, I believe—I will make this an A—there is a 10-lane center known as Park Lanes.

Then, finally, where I am putting a B on the map there is now a 24-lane center called Belmont Lanes. That's in the Belmont Plaza shopping center. I have marked that with a B. That has 24 lanes.

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Q. Are these centers easily accessible to each other?

A. Yes.

Q. Could you point out how one would go from the two farthest points, that is to say, the centers farthest apart, Bowl-O-Mat and Belmont Lanes?

A. When I was out to Pueblo just a month ago, I drove in two ways to get crosstown to Belmont; one way,

you go right through the downtown area, and that took perhaps 12 minutes, to go from our center to Belmont.

There is another way, which is a little bit longer, but perhaps a little shorter in time, by going out Northern Avenue, I believe it is, to Interstate Highway 85, which circles the city, and when you get off at the intersection you are right at Belmont, that's a minute or two faster.

To get to Bowlero Lanes, one has to pass Bowlero in order to get to Belmont when one is downtown. That's a matter of six or seven minutes, depending on the traffic conditions.

And Park Lanes, the ten-lane bowling center, is just a minute or two away from Bowlero.

Q. In other words, none of the centers in the town are farther apart from you than Belmont itself, they are all nearer; is that your testimony?

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A. Yes.

Q. And in time; is that also true?

A. Yes.

• • •

Q. Mr. Lieblich, can you tell us whether or not Bowl-O-Mat to your knowledge has bowlers who use its facilities and who come from points nearer to Belmont than to Bowl-O-Mat?

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A. Yes, the answer is yes, there is a complete interchange of bowlers from one bowling center to the other. As an example, when I was visiting there last month, and on almost every one of my prior visits, I'd almost always visit the other centers with the manager of our bowling center or one of our regional supervisors, and almost in-

variably some of the bowlers in the other centers would come up to our manager or our regional supervisor just to say hello.

I learned that these were bowlers who were also bowling in our center as well.

Q. Now, would the same be true of bowling leagues, as to the individuals you have just described in your testimony; in other words, throughout the City of Pueblo could they come indifferently to one section or another, let's say, with respect to time, that is to say, without regard as to which one is nearer or farther?

A. Yes, a league is made up of individual bowlers, and they come from whatever part of the community in which they may reside.

Q. Now, Mr. Seeley addressed your attention to the downtown area. Is there any real suburban area surrounding the City of Pueblo?

A. Well, I would describe our area as well as Belmont's area as certainly more suburban in character than down-

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town.

Q. If you go, say, to the west, does the population begin to thin out after a while?

A. No, it just ends, because once you leave, once you drive perhaps a mile beyond our center, mile and a half, you get desert and mountains.

Q. Am I correctly describing the direction this way (indicating)?

A. Yes. That would be westward.

Q. Desert or mountains over here?

A. Yes, either west or south, you soon get—west or south, you soon run into desert or mountains.

Q. There is desert or mountains here or here (indicating)?

A. Yes.

Q. Where is the nearest community of any size going in this direction, which is east?

A. Going east, I can't think of any community of any size for many hundreds of miles because as you go east you then get into the great western prairie.

Q. What happens if you go north in our chart here, off the chart?

A. North, sir, you hit Colorado Springs, which is approximately 40 miles due north.

Q. Is that—are there bowling centers which

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exist in Colorado Springs?

A. There are bowling centers in Colorado Springs that service the bowlers in that community.

Q. So that you have a community, if it bowls at all, which must go to one of the centers you described and located on that map; is that right?

A. Yes.

Q. Could you give us the description of Park Lanes; have you ever been in Park Lanes?

A. Yes, on several occasions.

Q. Did you look around it?

A. Yes.

Q. Taken it in your eyes?

A. Yes.

Q. What does it look like?

A. As I just mentioned, I was there a month ago, it looked better on my last visit than it did ten years ago or twelve years ago when I first visited that center.

The owner has done a very nice job in the last year or two years of remodeling his ten-lane center.

Q. Prior to the last two years do you have an idea as to what Park Lanes looked like?

A. It was and still is a very small center. It still has no parking facilities of any type. It is a small

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center. It has a very tiny little area where one can have a—where food is served, very little, snack bar area, I don't recall seeing any cocktail lounge, but I did see a sign that they were selling Coor's beer, I think they probably have a beer license.

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Q. Do you remember how many lanes it had?

A. It has 10 lanes.

Q. Could you describe the center known as Payne's for us?

A. Yes. That has 12 lanes. That hasn't changed at all in the 12 years that I have been visiting in Pueblo.

It is still a very small, ill-kept center. It has no carpeting.

It has a very small snack bar area where the fumes emanate as you open the door, you walk into the center, you smell some of the aroma of food.

It is not at all an attractive center.

This has been more or less in the same condition for the last 12 years.

Q. Now, sir, please describe for us Bowlero, the center which is up, you have designated it as being in this more or less eastern part of the town.

A. Yes. Bowlero has 32 lanes. It is built in a shopping center. It is built downstairs. It is a basement installation.

It has posts throughout it, which is a detriment to bowlers, as the bowler prefers a clean sweep of lanes.

It has a snack bar, it has a cocktail lounge, it

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has a pro shop.

The owner has recently upgraded the facility. He has put in new carpeting.

I think he has changed his masking units to improve the appearance.

It is certainly, comparing it, it is not a really top-notch center compared to many that I have seen throughout the country, and it is surely not one comparable to our 40 lanes in Pueblo.

Q. Do you know whether or not Bowlero is equipped with Brunswick equipment?

A. No, it is not.

Q. What about the other centers you have just testified about; do you know whether they have Brunswick equipment?

A. I really don't recall if Payne's or Park have any AMF or Brunswick equipment. I just don't know, sir.

Mr. Seeley: I will accept what it says on your map there, if you wish.

Q. What about Belmont?

A. Belmont I haven't described, sir.

Belmont does have 24 Brunswick lanes. That center, which opened in 1962, is in a, what we call, a free standing building. It is a separate building.

It is a very attractive center. It has a wide

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concourse. It is nicely carpeted. The equipment is Brunswick equipment. It's been modernized recently with what Brunswick calls an A-2 device to give a speeded up return when the bowler throws his first ball.

It has a very attractive snack bar, and it has a very lovely cocktail lounge.

From all standards, it is really a very first class center.

Q. Now, Mr. Lieblich, your center was originally started 1960; was that your testimony before?

A. Yes.

Q. When was it opened for business?

A. It opened approximately August 1 or August 15. Our league season begins on September just after Labor Day, and we were open for business just before Labor Day 1960.

Q. Would you describe your center in terms of what it looked like and what facilities it had?

A. Yes. I don't say this because it is our center, but in all of the centers that I visited throughout the United States I don't think I have ever seen any one more attractive than our center in Pueblo. It is just a handsome center. Mr. Hanigan and Mr. Stackhouse when they put up the building—

Q. Pardon me.

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Who are Mr. Hanigan and Mr. Stackhouse?

A. These are the gentlemen that I said had come to my office in Paterson. They were the builders. They constructed the building which was leased to us.

It was built on very, very spacious lines. It has a very, very wide concourse. By "concourse," I mean the area where spectators or other people can congregate.

It has a very attractive snack bar area. It has a very handsome cocktail lounge. It has a nursery where we take care of the little children who come with their mothers when their mothers bowl.

It had at one time a billiard room, which has been converted now for other purposes. We use it as a meeting room now for our leagues.

It is very well carpeted, carpeting has been changed several years ago, but it was always very handsomely carpeted.

The air conditioning system is in excellent condition and always has been. We have recently increased the capacity of the air conditioning.

In all respects we are very proud to say that this is one of our finest centers in physical appearance.

Q. In comparison to the others, what other

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center would you say is closest to yours in terms of facilities, number of lanes available, and generally in terms of equipment and attractiveness?

A. In terms of members, Mr. Hoffmann, Bowlero has 32 lanes, and that's the closest to 40.

In comparison to a first class bowling center, the only one that I would say is first class is the Belmont operation which Brunswick now runs across the other side of town.

Q. Does the Belmont center, do you know, have modern Brunswick equipment in it?

A. Yes, it has a very, most modern of the Brunswick equipment.

Q. What sort of pinsetters are in your center?

A. We have original—

Q. In Pueblo.

A. The original pinsetters that were installed in 1960.

Q. And is that—what is the name generally given to that type?

A. I think it was called a A-1 but I—

Q. A-1 describes a series of pinsetters made by Brunswick; is that what you're saying?

A. Those were the pinsetters they were manufacturing in 1959, 1960, 1961, to the best I recall.

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Q. Have Brunswick produced some more modern pinsetters?

A. Yes.

Q. How is that referred to?

A. In about 1963, if my memory is right, sometime there, Brunswick came out with what they call an A-2 pinsetter. And the purpose of that machine was to speed up the return of the ball. In this manner the bowlers could finish their games faster, and the second—I should say that there are two basic shifts of bowlers in our league play at night. The first begins at about 6:00 or 6:30 and the second at 9:00 or 9:30. And the purpose of the A-2 was to speed up the game so that the second league could start 15 or 20 minutes earlier. This is very important to attract more bowlers, because often bowlers don't like to stay out so late at night.

Q. Does the use of the A-2 result in any way in increased traffic through a center?

A. It is supposed to. It is supposed to be more competitive because you can get more leagues. It's an inducement to get leagues on the second shift. And also during heavy times on weekends, when there is a lot of open bowling, it enables one to get the bowlers in and out a little bit faster.

Q. When you say in and out, you mean to complete

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their bowling faster?

A. Yes, sir.

Q. Now, sir, do you know when Belmont first started in Pueblo?

A. Yes, I do.

Q. When was that?

A. It opened in August of 1962.

Q. Do you know who owned Belmont at that time?

A. Yes.

Q. Tell us that, please.

A. It was a corporation, of which a Mr. John Holt, if my memory is right, was the president.

Q. How do you know that he was president?

A. I met him on several occasions.

• • •

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Q. Mr. Lieblich, in the course of your carrying on your business as president of the plaintiff corporation, you testified earlier in this proceeding that you received economic reports from time to time, describing bowling conditions, is that a fair statement of your testimony?

A. Yes, it is.

Q. Did you receive any reports of that character which related to the competitors of Pueblo Bowl-O-Mat in Pueblo?

A. Yes.

Q. Any reports which bore on the financial stability of your competitor, Belmont Lanes, in 1962?

A. Yes.

Q. Tell us what those reports were.

Mr. Seeley: I object, if the Court please. If they are in writing, they should be produced. If they are oral, they are hearsay.

The Court: I will permit him to testify from his own recollection or memory, what he has read.

What is your best recollection? Do you

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understand the question?

The Witness: Yes.

The Court: Answer it.

A. At one meeting with Mr. Holt—

The Court: Don't repeat anything he told you. You are a lawyer.

The Witness: I am trying to be as careful as I can, your Honor.

The Court: All right.

A. At one meeting with Mr. Holt–and I don't recall if it was the first time or the second time that I met him, but it was in the offices of Brunswick in Chicago. Mr. Rudo had arranged for Mr. Holt to meet with him. At that time we were experiencing very serious financial difficulties in the operation of our center, which resulted primarily after Belmont Lanes opened.

And Mr. Rudo had suggested to me that perhaps Mr. Holt would want to buy our center.

The Court: And this year is?

The Witness: This was in 19—it was the latter part, sir, of '62 or the early part of 1963.

• • •

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A. I met with Mr. Holt on several occasions. I don't remember if it was the first time or the second time that I met him. I think it was the first time. It was in the office of the Brunswick Corporation in Chicago. Mr. Milton Rudo, who was then the head of the Bowling Division of

Brunswick, arranged for the meeting. This was because our Pueblo center was in serious financial difficulties. And after many discussions with Mr. Rudo, he suggested that perhaps—

Mr. Seeley: Your Honor, I object to this as not responsive to the question. The question is: What reports did he receive—

The Court: I know, but he is laying a foundation with Mr. Rudo.

What is your best recollection of what he said to you–Mr. Rudo? And he is affiliated

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with your company, right, Mr. Seeley?

Mr. Seeley: Yes, sir. I am not objecting to anything that was said in front of Rudo.

The Court: I know you don't.

A. I told Mr. Rudo that we wanted to sell our Pueblo center.

The Court: What did Mr. Rudo say to you?

The Witness: He suggested that perhaps Mr. Holt's company would buy it. And he arranged a meeting, then, in Chicago between Mr. Holt and me, so that we might discuss it.

Q. When did this take place, sir?

A. It was either in the very late fall or winter of 1962 or in the early part of 1963.

Q. Who was present at the meeting?

A. Mr. Holt, and I, and–I am trying very hard to recollect if any of the Brunswick executives sat with us after the introduction. I just don't remember now. Per-

haps something will refresh my memory. But at this point I just don't remember.

Q. Well, did you at any time have conversations with Brunswick officials concerning Belmont's operations at a loss?

A. Yes, continually.

Q. Tell us about those.

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A. After my discussions with Mr. Holt I spoke with Mr. Rudo. And I told Mr. Rudo then that I was very disturbed and concerned to learn from Mr. Holt that Brunswick was receiving no payments at all from Belmont and Brunswick was insisting that we pay the full amount under our contract.

The Court: What did Mr. Rudo say, if you remember?

The Witness: Well, his position was always that he expected us to pay.

Q. Did you have any conversations concerning this subject matter with any other officials of Brunswick, other than Mr. Rudo?

A. Oh, yes.

Q. Who were those officials?

A. Mr. Saul Jacobson, their executive vice-president at that time. On another occasion Mr. James Urbanik, who became the president of the Bowling Division for a brief period of time when Mr. Rudo was away. On other occasions I spoke about this to Mr. Bensinger, the chairman of the board of Brunswick. I spoke with various members of the Brunswick Law Department about it. And I am sure I mentioned it to Mr. Hanigan on one occasion when I was conferring with him.

Q. Can you give us the substance of the con-

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versations?

A. Well, it was in the general area of the——

Mr. Seeley: If the Court please, I think he should specify who he is talking to.

The Court: If you remember with whom you spoke, on behalf of Brunswick.

Q. You had mentioned first the conversations with Mr. Jacobson.

A. Yes.

Q. Can you tell us about when they took place?

A. It was soon after my return from Pueblo in—I think my conversations with Mr. Jacobson were in the Spring of 1963, about the favoritism to Belmont.

Q. That was approximately 10 years ago, is that right?

A. Yes.

Q. I am not going to ask you to say precisely what he said to you and what you said to him, but can you give us the substance of that conversation, having taken place 10 years ago?

A. In connection with other matters I said to Mr. Jacobson that it was just downright immoral for Brunswick to insist that we pay fully when they had opened, equipped Belmont Lanes when I pleaded with them not to, because of our great financial dif-

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ficulty in our operation, and then not only to insist that we pay in full, but to permit this Belmont company to stay in there without paying a nickel to Brunswick, I said I thought that was absolutely immoral, if not illegal.

Q. Then do you recall what Mr. Jacobson said to you concerning the subject?

A. Well, I think he said to me—I know that Mr. Rudo said to me that the Belmont people were paying. I know Mr. Rudo told me that.

Q. Did Mr. Jacobson make any suggestion to you that he would alter the credit terms existing between——

Mr. Seeley: I object to leading the witness, your Honor.

Mr. Hoffmann: If your Honor please, I recognize the value of the objection, but I point out that he has apparently exhausted his recollection of the conversation with Mr. Jacobson, and I would like to make a suggestion, in the sense that I would with a piece of paper.

The Court: I will permit it at this time.

Mr. Hoffmann: Just to attempt to refresh

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his recollection.

Q. In the course of your conversation with Mr. Jacobson, Mr. Lieblich, was anything said by Mr. Jacobson, concerning the subject matter of the credit terms between your company—that is, Pueblo Bowl-O-Mat—and Brunswick?

A. No.

Q. You mentioned a separate conversation with Mr. Rudo. About when did that take place?

A. After my meeting with Mr. Holt in Colorado Springs.

Q. And where did it take place?

A. In the other bowling center that Mr. Holt's company had in Colorado Springs. I think it was called Circle Lanes.

Q. And would you identify for us who Mr. Rudo was at the time of the conversation?

A. He was the head of the Brunswick Bowling Division.

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Q. And was the conversation concerning the same subject as you have just testified to?

A. Yes, it was, the non-payment of any moneys to Brunswick, by Belmont Lanes.

Q. Tell us, as best you can, what you can remember of the conversation.

A. I remember it very well. Mr. Rudo said they were paying. Later I learned——

Q. By "they," are you referring to——

A. Belmont. Later I learned that that was absolutely untrue.

Mr. Seeley: I move that the latter statement be stricken, your Honor.

The Court: So ordered. The jury will be instructed to ignore it.

Mr. Hoffmann: I take it that that refers to so much as "later I learned that it was untrue."

The Court: Right. The first part will remain.

Q. Did you have any conversation with any other Brunswick officials concerning this subject matter?

A. Bill Blanks was aware of these situations.

Q. When you say, "aware of," as a result of the conversation with you?

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A. Yes.

Q. At about what time, about when in time?

A. All during this period, from late 1962 through the summer of 1963.

Q. And you had a number of conversations with Bill Blanks concerning this subject matter.

A. No.

The Court: Mr. Lieblich, is that Blanks, B-l-a-n-k-s?

The Witness: Yes, sir.

The Court: All right.

A. (continuing) No, not too many.

Q. But more than one?

A. I don't remember, sir.

Q. Is there any other official that you can think of, of Brunswick?

A. No.

Q. If I put it to you that you may have had such a conversation with Mr. Jack Thomas, does that help to refresh your recollection?

A. Well, it doesn't really. I spoke with Mr. Thomas on many occasions in those years, about many things. But offhand, I just don't recall talking to Jack about this problem. But I may have forgotten.

Mr. Hoffmann: If I may, your Honor.

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(Discussion at side bar, off the record.)

By Mr. Hoffmann:

Q. Mr. Lieblich, do you have any recollection at all at this time of having conversations with any other Brunswick officials concerning this subject matter?

A. I don't recall any.

Q. If I were to refresh your recollection by telling you that at a prior hearing you said that, "I had numerous discussions over the years with Mr. Jack Thomas, the vice-president of sales," and then also that you talked with Mr. Hanigan; does that serve in any way to jog your memory?

A. I said before that I did talk with Mr. Hanigan. I had spoken to Jack Thomas on various occasions about putting in or not putting in the installation at Belmont. But I don't think I ever talked to Jack—I may be in error but—about the non-payment by Belmont to Brunswick. If I did, I don't recall it now.

Q. Did you have any problems about continuing your own center in or about 1962? Perhaps I should go at this way. Was Pueblo Bowl-O-Mat making money in 1962?

A. From the day that it opened in August of 1960

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it suffered very staggering financial losses.

Mr. Seeley: I move to strike the adjective, "very staggering."

Mr. Hoffmann: Perhaps I could ask the witness if he prefers to use some other adjective.

The Court: The word "staggering" will be stricken and the jury will be instructed to ignore it. Pueblo suffered losses right, small or great?

The Witness: Yes, sir.

The Court: Yes, to both?

The Witness: Half a million.

The Court: Half and half.

The Witness: Half a million dollars.

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Q. Half a million dollars from what period?

A. From the time it opened.

The Court: Excuse me, Mr. Hoffmann. From August of 1960 to when, Mr. Lieblich?

The Witness: Right to date, sir.

The Court: All right.

Q. Mr. Lieblich, did you have occasion to call the losses of Pueblo Bowl-O-Mat to the attention of Brunswick?

A. On many occasions.

Q. And what was your objective in doing so?

A. The first time that I found it necessary to call it to their attention was in June of 1961, when I learned that there was talk of the installation of a new Brunswick equipped center in Pueblo, Colorado. I called Brunswick in Chicago. Jack Thomas came out to Paterson to talk—

Mr. Seeley: If the Court please, I would like to ask that the running objection which I expressed this morning go to this line of examination.

The Court: So ordered. Yes.

A. (Continuing.) Jack Thomas came out to Paterson to talk with me. I believe that Mr. Rudo—yes, Mr. Rudo was present with him at that time. I took out our figures. And our Pueblo center had been in operation then for nine months, or ten months. And we had already gone through

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the whole of the bowling season. Bowling is a seasonal business. It begins at Labor Day, when our leagues start. Then it peaks off—goes down after the leagues end in about mid-March or April.

So at that point we had already our figures for the great part of the bowling year. And I showed Jack—Jack Thomas and Milt Rudo—those figures. And I showed them what a terrible loss—or what a loss we were incurring then. And I said, "Jack and Milt, if you put in another center these losses will become even greater than we are now suffering."

Q. Did they reply to what you said?

A. They went back to Chicago. And a few weeks later I was very relieved when either Jack called me, or wrote to me, and said they were not going to put in a center.

Q. About when did this happen?

A. That was in about June—it was a few weeks after their conference with me in Paterson. I'd say it was about June or July of '61 when they told me they were not going to put in a center.

Q. And what happened to the Belmont center after that time?

A. In December of 1961 it came to my attention again that there was talk of Brunswick equipping a new center. And I called Mr. Rudo on the telephone. And I said,

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"Milt, what is this I hear about a new center going in out in Pueblo?"

And he said, "Yes, we are going to install a new place."

I said, "I want to come out to Chicago and talk with you and Saul Jacobson, because now we have the first full year of our operation, the second season is now underway, and we are still incurring a very—a loss, and I want to talk to you about it."

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Q. And did that trip ensue?

A. Yes, they invited me to Chicago, and I had a very unhappy discussion——

Mr. Seeley: I move that that be stricken.

The Court: It will be stricken.
You had a conversation or discussion.

The Witness: I had a discussion with Mr. Rudo in which he said they were still going to go ahead and put in that installation.

I stayed on for lunch, and at lunch Mr. Saul Jacobson, who was the executive vice president of the company, came by my table as I was eating in the dining room where the Brunswick executives have lunch, and he tapped me on the shoulder, and he said, "Dan, I understand that you and Milt had had some serious words before lunch."

I said, "Yes, Saul."

He said, "I'd like to talk with you about it."

So we had an additional conference.

Q. Where did that take place?

A. In Brunswick's office, and I tried to explain to Mr. Jacobson what our financial situation was, and then I said to Mr. Jacobson, I said, "Saul, let me try to prove to you that Pueblo still can't take another bowling center."

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He said, "What do you have in mind, Dan?"

And I said, "Milt Rudo said that there are many, many more bowlers in the Pueblo community than we have gotten to bowl."

I said, "Let's undertake a campaign, both of us together, Brunswick and our company, to support this claim that there are more bowlers."

And they agreed that they will do that with us. We talked about a plan and a program whereby for a period of perhaps two months we would undertake—and this was, this was done for the first time ever in a bowling center—an all-out campaign to create more bowlers in the center.

It was called then, and subsequently, the Brunswick Learn-to-Bowl Program.

And we took our director of marketing, Bill Scott, was his name and Bill was going to spend two months in Pueblo, along with some Brunswick officials. And Bill Blanks came out to Pueblo also to get this thing off the ground.

The purpose of this thing was in a two-month period to by telephone, to call every housewife, to call every person they could in the City of Pueblo and invite them into our center to teach them how to bowl. This is what we agreed we would do at that conference between Mr.

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Jacobson and Mr. Rudo.

Shall I continue?

Q. Yes, if there is more to this.

A. Well, what happened after that, I went to Pueblo, Mr. Blanks came to Pueblo, our Bill Scott came to Pueblo.

We hired quite a lot of additional personnel in our bowling center. Brunswick sent their top promotion man, his name was Warren Kelly, very experienced man in promotion, and after several days of discussion and planning as to what would be done, this Learn-to-Bowl Program was commenced.

And I was there while it was getting underway.

When about the second or third day had gone by I learned from Neil Roquemore, who was the Brunswick branch manager, that Brunswick was going to go ahead anyhow and install Belmont Lanes. Immediately, and I

asked Bill Blanks to stay with me at my room in the motel so I could call Milt Rudo in his presence, and I don't think I was able to, I don't think Milt Rudo was available, but I did get Milt Rudo the next day, and I said, "Milt, we are here to conduct this experiment to prove to you and your executives that Pueblo will not support another installation, and when we are two days in the program I learn you are going to do it anyhow."

He said, "Yes, if we don't do it AMF will put it

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in."

I thereupon got a letter from AMF—excuse me, I had already received a letter from AMF some time ago which I gave to Mr. Rudo, that in AMF's opinion the area couldn't support another bowling center.

Mr. Seeley: If the Court please, I think the document should be produced rather than the characterization——

The Court: Do you have that, Mr. Hoffmann?

Mr. Hoffmann: I don't think I have it at the table.

The Witness: I have it.

Mr. Hoffmann: Pardon me, the witness tells me he has a copy of it in his bag.

The Court: Have it marked for identification.

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Mr. Hoffmann: Miss Costello, I'd ask you please to mark as Plaintiff's 6 for identification what appears to be a copy of a letter from Lindsay Crump, assistant vice president, sales, AMF, from Mr. Crump to Mr. Daniel Lieblich, under date of May 31, 1961.

(Exhibit P-6 marked for identification.)

Mr. Hoffmann: Could I have a brief housekeeping conversation with my friend?

The Court: Yes.

Mr. Hoffmann: Your Honor, I ask leave to officially attach to what has now been marked Plaintiff's 6 for identification an internal Brunswick memorandum from Thomas to Mr. R. M. Gebben, under date of June 2, 1961.

The Court: Thomas to whom?

Mr. Hoffmann: Mr. R. M. Gebben. And there are copies indicated to Messrs. Jacobson, Rudo——

Mr. Seeley: Are you marking the second sheet?

The Court: P-6 for identification, consisting of how many sheets?

Mr. Hoffmann: Two sheets. The letter from Crump as described before, and the memorandum, Thomas to Gebben.

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The Court: Have the witness identify the exhibit.

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's 6 for identification, and I ask you if that's the letter from AMF to which you have just referred in your testimony?

A. Yes, this is AMF's letter to me of May 31, 1961.

Q. Was that letter received by you?

A. Yes.

Q. Would you look, please, at the second page of the exhibit for identification?

A. Yes.

Q. The copy of a memorandum apparently signed by J. Thomas?

A. Yes.

Q. Have you ever seen that before?

A. Yes, I have.

Q. Can you tell us, sir, the circumstances under which it first came to your attention?

A. Yes, you gave it to me, Mr. Hoffmann. It came from the Brunswick records which you subpoenaed, apparently, and looked at, and you gave it to me.

Q. Now, sir, this letter from Mr. Crump, that came in response to an inquiry made by you of AMF; is that the sense of it?

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A. Yes.

Q. And without my testifying, and preferring yours, would you read the first sentence?

A. "Following your telephone call about ten days ago——"

Mr. Seeley: I suggest we better have it offered in evidence.

Mr. Hoffmann: I submit that this so far is preliminary to making the offer.

The Court: He is reading from the exhibit, Mr. Hoffmann.

Mr. Hoffmann: Yes, but simply, if your Honor please, to show that it was in response to a telephone call of his that the letter came and then the circumstances of the attachment——

The Court: I will permit him to read the first three lines only.

Mr. Hoffmann: That's all I'd require.

The Court: Mr. Lieblich, please read it.

A. "Following your telephone call about ten days ago I investigated the matter of the proposed new bowling facilities in Pueblo, Colorado."

Q. Was it in response to your telephone call that you received this letter, which has been marked for identification?

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A. Yes.

Mr. Hoffmann: If your Honor please, I now offer into evidence—I think you have the one with the stamp on it——

The Court: Any objection, Mr. Seeley?

Mr. Seeley: Only the standing objection to the line of testimony.

The Court: All right, into evidence, P-6, two sheets, one a letter, the other a memorandum.

(Exhibit P-6 received and marked in evidence.)

Q. Now, again, Mr. Lieblich, referring to Plaintiff's——

Mr. Seeley: I'm having just a little trouble hearing you, Mr. Hoffmann.

Mr. Hoffmann: I am so sorry. I will keep my voice up, Mr. Seeley. I wish it would stay up with the same firm timbre that yours has.

Q. Mr. Lieblich, I show you Plaintiff's 6 in evidence. I address your attention to the first full paragraph after the sentence which you read earlier, having to do with your telephone call.

A. Yes.

Q. Does your recollection tell you about the Pueblo area had about 90,000 people in it?

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A. Yes.

Q. Reference is made in that paragraph to 90,000 people being served by a total of 94 lanes.

Is that also in accord with your own knowledge?

A. Yes. If you add our 40, and Bowlero's 32, and Payne's 10—Payne's 12, and Park Lanes' 10, that would come to, I believe, 94 lanes.

Q. Now, sir, I ask you to read aloud, if you will, the next sentence of the first full paragraph of the letter from the AMF official to yourself, the sentence starting with "It is my understanding."

A. "It is my understanding that the Pueblo area population contains 25,000 people of extremely poor financial means, and that the steel industry in Pueblo is operating at about 60 per cent capacity. These facts alone would convince us that new bowling facilities for Pueblo are not justified. On the basis of those facts we cannot entertain additional new bowling lane business in the area at this time."

Q. Mr. Lieblich, did you ever have occasion to discuss this statement or the sense of the statement with AMF officials?

A. Yes.

Q. And was that statement confirmed by your conversations?

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The Court: I will permit yes or no.

A. Yes.

The Court: Next question.

Q. Now, Mr. Lieblich, going near to the end of the letter, the statement is made:

> "In any event, Mr. Lieblich, you may be assured that we do not consider Pueblo as a justifiable site for a new bowling center installation at this time."

Do you know of your own knowledge whether or not AMF after May 31, 1961, the date of this letter, installed any bowling center in the Pueblo area?

A. No, it did not.

The Court: Do you know of your own knowledge whether they sold any equipment in the area?

The Witness: Yes, I do.

The Court: Next question.

Q. Was that installation after this letter, or before, do you know?

A. No.

Q. What's the answer, "no," you don't know?

A. No, the answer is I do know, they did not sell anything in the area.

The Court: Members of the jury, we will take a short recess.

(Short recess.)

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The Court: Mr. Hoffmann, if you'd be more comfortable, I will allow you to remain seated, if you like.

Mr. Hoffmann: If I can keep my voice up.

Q. Did you receive any information concerning credit arrangements made between Belmont and Brunswick when Belmont originally started?

A. Yes.

Q. What was the nature of that information?

A. You obtained from Brunswick, Mr. Hoffmann, and gave to me to examine, the Brunswick payment cards on the credit arrangements with Belmont Lanes as well as a schedule of all of the payments made by Belmont after it opened for business in August 1962.

Q. Do you have such card with you?

A. I have my records from those Brunswick cards.

Q. Do you have more than one copy of that?

A. No, I don't.

Mr. Hoffmann: May I have it, please?

Q. Mr. Lieblich, would you describe what it is you are holding in your hand?

The Court: Mark it for identification, first.

(Exhibit P-7 marked for identification.)

The Court: Short legend.

Mr. Hoffmann: P-7 simply is one sheet which

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has on top "Belmont Lanes, Pueblo, Colorado," and then some figures.

Q. Mr. Lieblich, can you describe what it is you are looking at?

A. Yes. This is a sheet which I prepared, which I took from the Brunswick ledger cards on Belmont Lanes in Pueblo, Colorado.

Q. What does the sheet show?

A. It shows a contract price, the cash payment, the deferred balance, the finance charge, the amount of the note, and then the record of payments after the establishment opened up.

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Q. All of this data was taken from the Brunswick ledger cards which had been furnished to us pursuant to demand or subpoena in this proceeding?

A. Yes, Mr. Hoffman.

Mr. Hoffmann: May I, your Honor, show it to my adversary? I regret I don't have a copy now.

Mr. Seeley: It corresponds with my information.

Mr. Hoffmann: Thank you.

May I offer Plaintiff's Exhibit P-7 into evidence? I don't think your Honor has had an opportunity to look at it.

The Court: Into evidence, P-7.

(Exhibit P-7 received and marked in evidence.)

Q. Now, by referring to P-7 in evidence can you give us the specifics as shown there concerning the arrangement made between Brunswick and the prior owner of Belmont?

A. Yes.

Q. Would you do that, please?

A. The contract price for the 24 lanes and 24 automatic pinsetters was $352,229.41.

There was a cash payment made of $35,225.41, with an unpaid balance of $317,000. There was then added a Brunswick finance charge of $88,761, and a note for an eight-year period in the total amount of $405,765, and

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the note provided for 64 payments of 6,000 at $340, beginning on October 15, 1962.

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Q. Do you have any knowledge as to whether or not those payments were made?

A. Yes, I do.

The Court: What is the date of that? Do you have a date?

The Witness: Yes, sir. June 5, 1962.

Q. What is your knowledge concerning the question of making the payments by Belmont Lanes?

A. On October 19, 1962, $1,000 was paid. On January——

Q. Pardon me, sir. Is that the first indicated payment?

A. Yes.

On January 10, 1963, a thousand dollars was paid. And on January 15, 1965, $300 was paid.

In the course of the three years the records reflected that $2300 was paid by the owners of Belmont to Brunswick.

Q. And is that payment on a total price of $352,229, is that what you said?

A. No, sir; it is on a total price of $405,765, including the Brunswick finance charge of $88,000.

Q. Again, did you have an occasion to exchange——

A. I can't hear you, sir.

Q. Did you have any occasion to exchange in-

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formation with Mr. Holt indicating to him the status of your payments to Brunswick?

A. Yes.

Q. And what was it that you told him?

A. That we had paid very substantial sums of money to Brunswick on account of our debt to it.

Q. And was this the subject matter of which you complained when talking to Brunswick officials?

A. At some point in time, yes.

Q. Do you know what ultimately happened to the Belmont Lanes?

A. Yes.

Q. What was that?

A. Brunswick took it over and began to operate it itself in April of 1965.

Mr. Hoffmann: I ask Miss Costello to mark as plaintiffs' Exhibit 8 for identification a schedule entitled, "Pueblo Bowl-O-Mat, Inc.," showing income and losses for that center for the period 8-31-61 through 8-31-72.

(P-8 marked for identification.)

Q. I show you what has been marked as plaintiffs' Exhibit 8 for identification. Can you tell us what it is?

A. Yes, sir. It is a record from the profit and loss

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statements of our Pueblo Bowl-O-Mat of its results for each of our fiscal years from the time it opened right through August 31 of 1972. Our company——

Q. I'm sorry. How was this prepared?

A. Our company has a fiscal year which ends on August 31.

Q. And what is the origin of the information which is contained on plaintiffs' Exhibit 8 for identification, where did it come from?

A. The books and records of our company, Pueblo Bowl-O-Mat.

Q. Would you go through the first line for us, please, under the heading, "8-31-61"?

A. Yes. The first line shows the lines—or, as I explained to the jury, the games per lane on an annual basis.

Q. The number is what?

A. For 8-31-61 it is 9,890 lines per lane.

Q. And then the next line, operating cash income, what is the definition of operating cash income used in this exhibit for identification?

A. In a profit and loss statement there are normally two lines of significance, one is what is referred to as the operating cash income and under that we have what is called financial charges. The financial charges include

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interest, depreciation and organization expenses. Sometimes people put interest as a part of the operating expense, but we have generally put them as a financing charge, as we refer to it, as a below the line item.

Operating cash income means the total remaining after—of cash income—after paying all cash expenses, excluding interest payments, and depreciation, and organization expenses.

Q. And are those the items which are next indicated on the line?

A. Yes, sir.

Q. That is to say, interest, depreciation and organization expense?

A. That is correct.

Q. And then you have a bottom line showing income or loss, is that correct?

A. Yes.

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Q. What is the way in which the income or loss is calculated; can you tell us that in terms of the figures which appear on the line under 8-31-61?

A. Well, the income or loss was taken from our books and records, our profit and loss statements. That's what we call the bottom line figure. That was the end result of the company's operations for each year.

Q. Now, sir, what does it show in that year?

A. It shows that for the first year there was a loss of $33,763.

Mr. Hoffmann: Before I go any further, I think it is probably proper for me to request that it go into evidence.

The Court: Does your adversary have a copy?

Mr. Hoffmann: Yes, he has.

Mr. Seeley: I have no objection.

The Court: P-8 in evidence.

(P-8 received in evidence.)

Q. Now, Mr. Lieblich, looking to the bottom line, which you describe as income or loss, I notice that the loss item is in parenthesis, income without parenthesis; is that the legend?

A. Well, there is no profit. Every entry on the bottom line has parenthesis, which indicates a loss.

Q. You anticipated my question. Looking along

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that line, are all of these entries—which are what you call the bottom line—losses for Pueblo?

A. Yes.

Q. That is to say, a loss for each fiscal year starting with the year 8-31-61 and ending with the year 8-31-72?

A. Yes, sir.

Q. And since—another one here, except that the lawyers, yourself and the Judge have copies of this—what is the total given for that loss over the period of years?

A. The total cumulative loss from the opening of Pueblo through the end of our last fiscal year was $511,200.

• • •

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Q. Mr. Lieblich, yesterday afternoon you testified about Plaintiff's Exhibit 8.

I show it to you again.

This is the exhibit—

A. I can't hear you, sir.

Q. This is the exhibit which contains the loss line for each year, 1961 to 1972.

Now, Mr. Lieblich, looking at the fiscal, 8/31/61—

The Court: What exhibit are you using?

Mr. Hoffmann: Plaintiff's 8, your Honor.

Q. The bottom line for Pueblo Bowl-O-Mat is a loss of $33,763, is it not?

A. Yes.

Q. And can you give us some explanation for that loss?

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A. Yes. There just wasn't sufficient games bowled or lines per lane to permit a profit.

The lines bowled were 9,890, and that wasn't sufficient to permit the center to operate at a profit.

Q. This is your first year of operation in your new center in Pueblo; is that right?

A. Yes, first full fiscal year.

Q. Would you look at the next year ending in August 1962?

A. Yes.

Q. And the explanation for that?

A. Same problem, a loss of $25,359, because, again, our lineage per lane was still so very, very low.

Q. Yet in the following year, in 1963, your total loss is less, is it not, it is only $3,637, on lineage which is even less.

Can you explain that to us?

A. Yes, because there was some very significant interest credit given to the company in that year.

The actual operating cash income was lower than the first two years because of the interest credit, the bottom line still had a loss, but was not as great a loss as the prior years reflected.

Q. Then your next entry the following year, 1964, a loss of $40,967.

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The explanation for that, sir?

A. Well, again, the company lost $0,967 that year because again our lines per lane was still so very, very low. It is under 10,000 lines per lane.

Q. And in 1965 a loss of $54,156?

A. Yes.

Q. The explanation, please.

A. Well, our—we did even less bowling in 1965 than we did in 1964, that occasioned the loss of forty thousand—excuse me, sir, that occasioned the loss of $54,156.

Q. And the loss goes up the next year to $75,916; is that right?

A. Yes.

Q. And the reasons?

A. Well, in April of 1965 Brunswick took over Belmont Lanes' 24-lane center in Pueblo, and as soon as they took it over and began to compete with us they began to take away some of the business that we had and had built up.

There were certain giveaways, certain price cuts that they practiced, and as a result we lost in 1966 some of the business that we had in 1965.

Q. When you say "business," you mean bowlers?

A. Yes.

Q. Also leagues; is that right?

A. Well, yes, of course.

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Leagues are composed of bowlers. When I say we lost bowlers, we lost some leagues and some of the individuals who used to do open bowling with us, they went over to Belmont to bowl.

Q. And 1967, any special reason for the loss of $62,187?

A. Yes. In the summer, it was about a year after Brunswick was operating Belmont Lanes and after they had taken some of our bowlers away, they then put in in Belmont something we were unable to afford for Pueblo, and that was the new speeded up ball returns, they were called A-2's, I think.

I described A-2's on a prior day.

After that our manager, Bill Kenny, had a good deal of difficulty in building his business. That's why we lost in 1967, $62,187.

Q. Now, if you look at the bottom line again, you continue to have losses, $61,637 in 1968, 57,738 for 1969, 50,833 in 1970.

Is there any special reason, beyond what you testified to, for those losses?

A. Just that there still wasn't enough bowlers in the Pueblo community to support all of the bowling centers that were there, and we still did way under the 15 or 17 thousand lines that we expected when we opened

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the place in 1960.

Q. If you look at the top line, the lineage per lane, would you be good enough to compare the lineage as it was when you opened in 8/31/61, with 1970, 8/31/70?

A. Yes. In our first year we did 9,890 lines per lane or games per lane, and to get the total number one would multiply that by the 40 lanes we had.

But in 1970 it had gone all of the way down to 7,722 lines per lane.

Q. In this period of almost ten years your lineage did not increase, but sank by at least 1500 lines; is that right?

A. Yes, those are the figures.

Q. Now, sir, in 1971 there is again a loss, but it is a smaller amount; is that right?

A. Yes.

Q. $27,707.

A. That's right.

Q. To what do you attribute the improvement?

A. Well, finally the population in Pueblo had begun to grow just a little bit.

Also all during the years that Bill Kenny was the manager of Pueblo he had worked so hard and we had worked so hard to create more bowlers among school children and among ladies. And we finally began to see by 1971 the

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results of some of these school children whom we did teach to bowl in our centers and in the schools, now finally coming as young adults to bowl and to pay for it.

Q. And then your final tabulation on Plaintiff's Exhibit 8 is for the year ending 8/31/72; is that right?

A. Yes.

Q. And there the lineage has risen again; isn't that so?

A. Yes.

Q. But not up to 1961, when you started?

A. No.

Q. And the loss is, again, somewhat less in 1972, but still a loss?

A. We lost $17,302.

Q. And this operation has persisted from August 1961, that is, your first fiscal report, through August 1972, with a grand total loss of $511,200, as you pointed out yesterday; is that right?

A. Yes.

Q. Can you tell us why you let Pueblo run so long with this loss?

A. Well, for several reasons.

Number 1, there came a time in 1964 when we had guaranteed Brunswick Corporation with a parent company guarantee the payment of all of the obligations of all

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of our subsidiaries, including Pueblo.

Consequently, once that guarantee was given, we had to pay for all of the equipment in full, but once it was paid for, at least that ended for a moment any additional cash that we had to put into it to pay for the equipment.

Also, we looked forward to the day when Belmont would close its doors or competitors might stop their operations.

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Q. And in such case, would you have hoped to prove the Pueblo Bowl-O-Mat position?

A. Considerably.

Q. How would that come about?

A. There's no doubt in our minds, in my mind, through my travel around the country, my knowledge of what happens when a bowling center closes down, if Belmont, if Brunswick was to shut down its Belmont lanes, its 24 lanes, there would be a good deal of the business that's now with Belmont which would come over into our center.

Q. Indeed, the choices were limited, as were pointed out on the map yesterday; isn't that so?

A. Yes. If bowlers are going to—they want to bowl, and Belmont closes down, they just have to use either our facility or Payne's Lanes or Park Lanes or Bowlero.

They are not going to stop bowling.

Q. Bowlero was the one that was downstairs in the ground floor of the building—

A. Yes.

Q. And Payne's and Park's were tiny centers?

A. One has ten lanes and one has twelve lanes.

Q. Now, sir, I want to address your attention to—one moment, please.

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Mr. Hoffmann: Can I have marked for identification as plaintiff's 9 for identification a chart which is entitled, "Pueblo Bowl-O-Mat," and shows various income sources.

(Exhibit P-9 marked for identification.)

Q. Mr. Lieblich, would you be good enough to look at Plaintiff's 9 for identification.

Can you describe what it is for us?

A. Yes. This is a chart which I prepared with the assistance of our accounting department, which reflects the total income by category for Pueblo every year since 1965 to 1972.

And the purpose of it is to relate income from the different categories to a comparison with the bowling revenues to reflect how the net income of Pueblo increases for each additional $1,000 of bowling revenues that it receives.

Q. What was the source for the information provided on P-9 for identification?

A. The books and records of the company.

Q. Is there any other information found on the chart which does not come from those books and records?

A. No, sir, all of it comes from the books and records of the company.

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Q. And the analysis of the records to the extent that thought process is reflected on nine, who made that?

A. I did, sir.

Mr. Hoffmann: I'd like to offer P-9 into evidence, your Honor.

Mr. Seeley: No objection.

The Court: Into evidence, P-9.

(Exhibit P-9 received and marked in evidence.)

Q. Now, Mr. Lieblich, would you be good enough to look down along the line of the entry for 1965 for Pueblo Bowl-O-Mat, the first entry.

You will see the word, "bowling" followed by 168,779.

What does that figure represent?

A. That's the total of the revenues from bowling itself, just the actual revenue charges for the games bowled?

Q. Is that also referred to as lineage?

A. Yes.

Q. When you say, "total," you mean the total for this Colorado subsidiary, Pueblo?

A. Yes, it is only for Pueblo Bowl-O-Mat, in 1965 the total bowling revenues for Pueblo $168,779.

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Q. The next line says, "Shoe rental."

What does that mean?

A. Well, many of our bowlers, our league bowlers particularly, have their own bowling shoes, but many bowlers don't own their own bowling shoes, and when they come to bowl they are able to rent shoes from us at our counter, and the income from the rental of those shoes we have put in this category of, "shoe rentals."

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Q. And the percentage mark is the next column, it says "2 per cent for shoe rental."

What does that mean?

A. It means that shoe rentals were 2 per cent of the bowling revenues in 1965.

Q. And then snack bar, snack bar, $21,494.

A. That is the total of the revenues from our snack bar operation in Pueblo during the year 1965.

Q. And again you have a percentage mark, 13 per cent?

A. Yes.

Q. 13 per cent of what, is that?

A. 13 per cent reflects that the income from the snack bar of $21,494 is 13 percent of the total of the bowling revenues of $168,779.

Q. And then I notice "bar," the next line, $4,704.

Again, that's the income from the bar for 1965; is that correct?

A. Yes.

Q. And the percentage, 26 per cent, would be the bar income in relation to the bowling revenues; is that right?

A. Yes.

Q. That is to say, 26 per cent of the $168,000

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of bowling income; is that right?

A. Yes.

Q. And then "pro shop," $4,744, this is done in the same way, I take it?

A. Yes. The pro shop is the small retail store that we had to sell to bowlers who desire to purchase them bags, balls and shoes.

Q. That reflects 2 per cent of the total bowling income for the year?

A. That's right.

Q. And finally, "Mach."

May we assume that means "machinery"?

A. No, machine and miscellaneous income.

Q. Would you explain what "machine and miscellaneous income" means?

A. Yes. We had candy and cigarette machines supplied to us by concessionaires. And they would give us a certain per cent of the income from those machines when they would collect them.

Also we would offer for rent our lockers, that would be some miscellaneous income. We had pinball machines, games which were owned by pinball machine operators, and they would give us when they cleaned out the machines on a weekly basis a part of that income.

And all that additional miscellaneous income we

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grouped together in this one category called "machine and miscellaneous income."

Q. And that bore a relationship of 3 per cent to the total; is that right?

A. Yes.

Q. Now, then, you have constructed for each year from 1965 to 1972 figures in the same way; is that right?

Q. Is that what the top part of this shows?

A. Yes, all the way down through 1972.

Q. Showing the percentages of revenues reflected by items such as shoe rental, snack bar, bar, and so on, in terms of the percentage of the total bowling revenue; is that the structure of the top part of Plaintiff's 9?

A. That's what the exhibit shows.

Q. And then finally an eight-year total on the right for the whole period, 1965 through 1972; is that right?

A. Yes, sir.

Q. Now, in the space immediately below—excuse me one second, your Honor—

Mr. Hoffman: Your Honor, this testimony might be a little more convenient to follow if I am permitted to pass a copy of this about to the jury——

The Court: You only have got one?

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Mr. Hoffmann: Only one to spare, but I thought I could pass it around so they could see what we are talking about.

The Court: I have no objection to that.

Mr. Hoffmann: I now have two, your Honor.

The Court: Give one to the foreman and the other at the other end—you are speaking about P-9?

Mr. Hoffmann: Yes. Perhaps if the witness and I worked together up here we could have a third one for that purpose.

The Court: All right.

Q. You just testified as to the material on the top part of Exhibit P-9.

Now, in the center of the exhibit there is a net income percentage after cost of goods and labor. What is that designed to show?

A. The purpose of the exhibit is to show net income, and in our bar and in our snack bar, unlike the highly leveraged aspect of our business where every dollar that comes in from bowling becomes net income, in our bars and in our snack bars we have certain items that we must continue to pay, and as business increases we still must have additional costs in our bars, in our snack bars.

Certainly as we sell more hamburgers we have to

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buy more hamburgers, we have to have more waitresses to serve them.

The same is true in our cocktail lounges; we serve more drinks, we have to buy more liquor.

So with respect to our bars and our snack bars, the center shows net income after the cost of goods and labor in the bar for 1965, at the very bottom, we show a 51 per cent profit after cost of goods and labor.

That means that our records reflected that the cost of goods and the cost of labor in our bars were 49 per cent.

Subtracting 49 per cent from 100 per cent, that would give us a 51 per cent cost—51 per cent net income in the operation of the bar.

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The Court: The bar only?

The Witness: Yes.

The Court: 50 cents on the dollar, roughly speaking?

The Witness: Yes.

In our snack bar, one doesn't normally make the same profit as one does in a cocktail lounge. In the snack bar we have done the same thing, taken every year, 1965 through 1972, we related there what our costs are for labor and the goods themselves, and subtracted that from 100 percent. We come up with our net income.

Again, taking 1972, where we show a 21 percent net income in the snack bar, that means that in 1972 the cost of the goods we purchased, the food, the supplies and the labor, was 79 percent.

Subtracting 79 percent from 100 we had a profit of 21 percent on our sales in the snack bar.

The same thing is true of the pro shop. Naturally, when we sell bags, balls and shoes we have to buy them from someone, and the more we buy, we have a very important related cost, so in 1972 where we show a profit of 37 percent it means that the cost of the goods we purchased was 63 percent.

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We have averaged that over the whole eight-year period so we could come up with a very fair, conservative average, of our operations, and for the bar, the net income that we received on an average each year for eight years was 43 percent, in the snack bar it was 15 percent profit, and in the pro shop it was 13 percent profit.

The Court: I have had some xeroxes of the exhibit made for the jury to look at, Exhibit P-9.

Any objection?

Mr. Seeley: No, your Honor.

The Court: I would suggest if there are other charts that you are going to offer into evidence, at the first recess, Mr. Hoffmann and Mr. Seeley, sit down and see if you can agree on them, and then I will have my law secretary see if he can run off some xerox copies.

Mr. Hoffmann: That's most appreciated, your Honor.

Q. Mr. Lieblich, this bottom entry, for additional thousand dollars of bowling revenue, net income increases, would you explain more fully what that means,

A. Yes, sir. Now that we have completed the first part of the chart, we are now in a position to deter-

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mine, and that's what the bottom line reflects, how much our net income increases for every additional one thousand dollars of bowling revenues that would come into our center.

Now, the first entry is "bowling". There I show $1,000. I show 90 percent equals $900.

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What that means, in our experience, for every thousand dollars of additional bowling income that we get, we should make $900. This is what I meant when I said earlier this is a very highly leverage business.

The Court: How about the first thousand?

The Witness: Well, sir, we have certain fixed costs when we open the doors for business. It doesn't matter if we do 9,000 lines per lane or 12,000 lines per lane, our rent is fixed, sir.

The Court: Your utilities, insurance, everything.

The Witness: Yes, sir; all those items, even our labor is essentially fixed.

The Court: All right.

A. (continuing) So, what I am saying is that there can be perhaps a 10 percent additional cost. There may be some additional labor. Of course, if we get a midnight league that bowls until 3 o'clock in the morning, we must have additional employees at our counter to supervise that operation. It means then that we might have the bar open a little longer.

Certainly, if our business increased significantly, our utilities will be a little bit more expensive. The electricity will be a little higher to run the automatic machines so much longer. But in the overall,

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in our judgment, it cannot exceed 10 percent of this additional cost.

And so we have, then, that for every one thousand dollars of bowling that would come in, we would make $900.

The next item are shoe rentals. Up above we have established on the eight year total that shoe rentals are three percent of the total of the bowling revenues. Consequently, the line, "shoe rental," at three percent is $30. That $30 is three percent of the thousand dollars of the additional bowling revenue.

Once again, that $30—every bit of that isn't profit, but again, 90 percent is. If we are renting the shoes—yes, they wear out a little sooner, if we are using them so much more frequently, and that is why we have a 10 percent charge than expense. So for every $30 of additional shoe rental income we should make 90 percent of that, or $27.

The next item is snack bar at 20 percent. Up on the top we have an eight year total and it shows that our snack bar income is 20 percent of our bowling revenue. So now, we show snack bar at 20 percent equals $200. That is 20 percent of the thousand dollars of bowling revenue.

As I said before, that $200 is not all profit.

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I have explained how there is a cost of our labor and a cost of goods. But in the snack bar analysis we show that our profit over eight years is 15 percent on each dollar that we take in. Consequently, we have multiplied the $200

of additional snack bar revenue by the 15 percent profit and that gives us $30 of additional profit resulting from this additional snack bar revenue.

The same procedure is followed with respect to the bar or the cocktail lounge. In the eight year total we have an average of 25 percent. Our bar revenues are 25 percent of our bowling revenues over an eight year average. We have that down on the bottom, bar at 25 percent is $250. That is, of course, 25 percent of $1,000.

Once again, that $250 is not all profit. As in the snack bar, there are the costs of goods and labor, which we have established over an eight year average of 43 percent profit. So we have multiplied the $250 of additional bar revenue by the 43 percent profit and that gives us net income of $108.

The next to the last item is pro shops. Over an eight year average, we have established that our pro shops are three percent of the bowling revenues. Consequently, we have taken three percent of $1,000,

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which equals $30.

Now, again, in the pro shops, our net income is only after we pay for the cost of the goods. And over the eight years our profit was 13 percent. We have then multiplied the $30 of additional pro shop income by our profit of 13 percent, which gives us then $4 of additional net income resulting from anticipated pro shops sales.

The last item is machine and miscellaneous income. Over the eight years that averaged four percent. Four percent of $1,000 is $40.

Here we have taken that at a full 100 percent, because here we have no cost at all. This income is primarily from vending machine operators, people who sell the cigarettes

and candy bars, and the pinball machines. And when they come and empty the machines they give us our part, that is all profit. Consequently, we have multiplied the $40 by 100 percent, and that will give us then $40 of net income resulting from the additional machine and miscellaneous income.

The total, then, for each $1,000 of additional bowling revenue—our net income at Pueblo would increase by $1,109.

Q. Is that for every thousand dollars of additional income at Pueblo—that Pueblo received—

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from bowling—it would also receive $1,109 from these other activities you just mentioned?

A. Not additional, sir.

The Court: Including bowling?

The Witness: Including bowling.

Q. Yes.

A. Yes, sir.

Q. And what you have here, is this based on the actual experience of Pueblo Bowl-O-Mat?

A. Yes, it is.

Q. This is not something you have just cooked up or imagined?

A. This all comes from our books and records, with the analysis I have put down on the bottom.

Q. And, sir, in connection with the activities of Pueblo Bowl-O-Mat, who is directly in charge of the activities, what is his function and name?

A. Well, as the president of the company, it is my responsibility—

Q. I said directly.

A. Yes, sir. The direct person would be the manager of the center in Pueblo.

Q. Who is he?

A. At this time it is Dick Counterman.

Q. For how long a time has he been in charge?

A. Dick has been there now for perhaps two years.

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Q. Who preceded him?

A. Well, Bill Kenny was there from 1962 until just a few years ago.

Q. What does Mr. Kenny do now?

A. Bill is now our midwestern regional supervisor in the bowling division.

Q. In his function as midwestern regional supervisor, does he exercise supervision over the Pueblo, Colorado, Bowl-O-Mat center?

A. He did for a period of some years. In recent years Pueblo was taken out of his area of responsibility. He has other centers in the Midwest. At the present time he does not supervise Pueblo.

Q. But for a period from 1962 to when did Mr. Kenny have an active interest and supervisory power over the Pueblo affairs?

A. I think almost through 1970.

• • •

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Q. We will go now to a discussion of another center, which is the center at Holiday. Will you tell me, please, where Holiday is located?

A. It is in Wappingers Falls, New York, which is just outside of Poughkeepsie.

The Court: What do you call it, Holiday Bowl-O-Mat?

The Witness: Yes, sir.

Q. And Holiday is one of the plaintiffs in this case, is it not?

A. Yes, it is.

Q. Is this a subsidiary, like Pueblo, of Treadway?

A. Yes, it is.

Q. And previously of National Bowling and National Bowl-O-Mat, is that right?

A. Yes.

Q. Can you describe for us what other centers there are in the area of Wappingers Falls and Poughkeepsie?

A. Yes.

The Court: How far from Poughkeepsie is

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Wappingers Falls, do you know?

The Witness: It borders it, sir.

A. (Continuing.) There is a center called Touponse, which I think is in Fishkill. There are two centers north of us, one called Mardi-Bob, and one called Hoe-Bow. A Mr. Hoe owns that center. That is where that unusual name comes from. It is not hobo in the sense of being a bum.

The Court: Is that the name, Mr. Hoe-Bow?

The Witness: His name is Hoe.

A. (Continuing.) North of the Hoe-Bow there is a center in Hyde Park. Then there was, rather close to us until Brunswick shut it down a few years ago, a center

called Dutchess Lanes. And that was the total complement of the Poughkeepsie area, as I best recall it.

Q. Mr. Lieblich, can you tell us when Bowl-O-Mat acquired Holiday?

A. Yes. It was in December, 1960. It was before there was a Bowl-O-Mat. It was one of the companies that I had—it was before there was a National Bowl-O-Mat.

The Court: When did Brunswick acquire Dutchess? Did you testify to that, or no?

The Witness: No.

The Court: When did your company acquire Holiday Bowl-O-Mat?

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The Witness: Yes, sir. It wasn't our company. I formed that in 1960. We bought the stock and the physical assets of a going 36-lane bowling center from a Joe DeLuccia. When we organized National Bowl-O-Mat Corporation in the spring of 1961, National Bowl-O-Mat Corporation received the stock of Holiday Bowl-O-Mat. It was in existence then before the company was organized.

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Q. In December of 1960, did there exist any of the other centers that you have described in your testimony as being in the Poughkeepsie area?

A. Touponse was not built at that time. The Dutchess Lanes was there. I believe that one of Mr. Hoe's centers was there. I don't recall if the other one was there or under construction, or if it was built a year or so later.

Q. Would you be good enough to describe the Holiday center as it exists today, for us?

A. Yes. It has 36 lanes. It is one of our original companies. It did not have Brunswick equipment—it was the only one that did not—because when we bought it Mr. DeLuccia had already installed AMF automatic pinsetters. So it was the only one of our centers that had AMF equipment. It is a very attractive building, which we lease from Mr. DeLuccia. The concourse is not as wide, it is not as attractive as our building in Pueblo. But it is a very, very nice, a first class bowling center. It has a very large cocktail lounge. Perhaps it has the largest cocktail lounge of any of our centers. It has a nursery, where children are, when their mothers bowl. It has a very nice snack bar area. It does not have a billiard area, never did have. I think it is a very first class center. We

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always try to keep it that way.

Q. And the equipment, you say, was AMF. Is it automatic equipment?

A. Oh, yes, it is automatic.

Q. Comparable to the Brunswick A-1 pinsetter?

A. It performs the same function.

Q. Do you have any knowledge of what the Dutchess center looked like while it was in existence?

A. Yes, I visited that on several occasions.

Q. Can you describe it for us?

A. Well, it was an older center. It had a fire at one time and it was rebuilt. But even after it was rebuilt, it still wasn't as nice a center as ours. It was in a downtown location. It had 26 Brunswick lanes. Its snack bar was a very tiny one. Its cocktail lounge was very small. It was carpeted. But being a much older building than ours, it just didn't have the attractive appearance.

It had parking. Its parking was sometimes cramped. On one or two occasions when I visited there, I couldn't

put my car in the parking area. I had to go a block or two away.

Q. And the number of lanes it had?

A. 26, I believe.

Q. Do you know whether your description now is

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a most recent description, do you know what lanes it had initially when Holiday opened in the area?

A. I don't recall now, Mr. Hoffmann.

Q. Do you have any recollection of knowing the owner of Dutchess Lanes during this period?

A. Yes. There was a very active woman in her, I guess, probably late 60's. Her name was Mrs. Ethel Levine.

Q. Does the name LeMar mean anything to you?

A. Yes.

Q. What is that?

A. I believe that was the corporation that Mrs. Levine had organized which operated her bowling center before Brunswick took it away and operated it itself.

Mr. Seeley: May I have the last answer read?

The Court: Repeat it, Mr. Reporter.

(Record read.)

Q. Mr. Lieblich, I want to show you a document, which I will have marked as plaintiff's Exhibit 10 for identification.

(Plaintiff's Exhibit 10 marked for identification.)

Q. (continuing) It bears on the outside cover

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a—

A. I can't hear you.

Q. It bears on the outside cover a legend, "Brunswick"—a B symbol for Brunswick. And it is an Evaluation Report No. 76, Le Mar, Inc., Poughkeepsie, New York.

(Handed to the witness.)

Now, sir, would you be good enough to look at Plaintiff's Exhibit 10 for identification; can you tell us what it is?

A. Yes. It is an evaluation report prepared by Brunswick Corporation at the same time, or prior to, they took over the center from Mrs. Levine and operated it themselves.

Q. Do you know how we come by it?

A. Yes, sir.

Q. Please tell us.

A. You gave it to me after you subpoenaed the Brunswick documents and they turned this over to you.

Mr. Hoffmann: I would like to offer this in evidence, your Honor.

The Court: Mr. Seeley.

Mr. Seeley: May I continue to look at it for just a moment, your Honor?

The Court: Surely.

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(Document examined by counsel.)

Mr. Seeley: No objection.

The Court: Into evidence, P-10.

(Exhibit P-10 received in evidence.)

The Court: Have you finished with P-9?

Mr. Hoffmann: Yes.

The Court: Do you want to collect them and give them to Miss Costello.

(Documents returned to the Clerk.)

Q. Now, Mr. Lieblich, would you be good enough——

A. I can't hear you, sir.

Q. Perhaps I should come a little closer to you. Would you be good enough to look at page 5 of plaintiff's Exhibit 10 for identification.

A. Yes.

Q. Do you notice——

A. Excuse me, sir. I don't have a page 5.

The Court: I have no 5.

Mr. Seeley: I haven't, either.

(Comments off the record.)

Mr. Hoffmann: Your Honor, Mr. Lieblich has the other pages, and I take it that you have.

The Court: I don't know what he has. I have no 5.

Mr. Hoffmann: I am the only one with page 5

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so far, your Honor.

Will you give me a moment for housekeeping?

The Court: Yes. If you want to go back to the files, I will declare a short recess.

Mr. Hoffmann: Thank you.

The Court: A short recess, members of the jury.

(Short recess.)

The Court: All right.

By Mr. Hoffmann:

Q. Mr. Lieblich, you have plaintiff's Exhibit 10 in your hand.

A. Yes.

Q. Would you be good enough to address your attention to page 5,

A. Yes.

Q. And I believe everybody now has page 5?

A. Yes.

Q. Do you notice a heading, "Market" on page 5?

A. Yes, I do.

Q. Can you state whether or not this market would include the City of Poughkeepsie?

A. Yes.

Q. The statement is, under B market, "The popula-

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tion in the designated primary draw area is presently 97,500, with an effective total of 95,400, eliminating 50 percent of the non-whites due to social and economic considerations."

I will ask you to pause over that for a moment. Can you tell us from your knowledge of these matters what is meant by the phrase, "primary draw area"?

A. Yes. The general market area from whence the bowlers would reasonably come.

Q. And would that be such as the area you described a little while ago in your testimony?

A. It would be larger than the area of Poughkeepsie itself. It would cover the whole area——

Q. Would it cover the group of various centers that you described?

A. Yes, all of those would be in the primary area.

Q. Now, sir, when the phrase, "effective totals," is used, do you have knowledge of what that means?

A. Yes.

Q. Would you tell us, please.

A. That we could presume that 95,400 people in the area would be our bowling people, that we could draw on that 95,000 to develop bowlers.

Q. Do you know whether it would include or not

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Vassar girls?

A. I don't think they would be included. Generally, just the permanent population of the area.

Q. What is this evaluation——

The Court: I don't know what the relevancy of that is. What is the relevancy of whether Vassar College women are able to——

Mr. Hoffmann: Well, your Honor, I don't want to go over a question and answer that was objected to earlier in connection with Pueblo, but I point out that it may be possible that these venturesome market reports include just populations——

The Court: College girls?

Mr. Hoffmann: —populations which have within them people who could never conceivably bowl.

Q. Now, Mr. Lieblich, this——

A. I can't hear you, sir.

Q. Well, I can't replace my voice, but perhaps I can stand closer to you. I had over the years a well won reputation which apparently has at this point in life been ended.

Mr. Lieblich, I would like, please, for you to tell us by looking at page 5 what does the last

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paragraph indicate to you, the four commercial competitive lanes in the market; are those the ones you described?

A. Yes.

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Q. Now, there is a reference to the fully automated, eight fully automated lanes for IBM.

Is that the sort of use of bowling that's not in a competitive market?

A. Yes, it is not a commercial operation, we could not consider those IBM lanes in considering the market area.

Q. Do you know what this evaluation report was prepared for?

A. Yes, I do.

Q. Can you tell us that?

A. It was prepared in connection with Brunswick's intended takeover of Mrs. Levine's center for themselves.

Q. As an aid in determination of whether or not it should operate Dutchess; is that the meaning of what you just said?

A. Yes.

Q. Again under "Market," "This is below the estimated proper ratio of 950 to 1 to for this type of market."

Do you notice that sentence?

A. Yes, I do.

Q. Can you tell us, please, what is meant by the "estimated proper ratio of 950 to 1"?

A. Yes.

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I have to explain that. The sentence above says, "This is a lanes to person ratio of 780 to 1. This is below the estimated proper ratio of 950 to 1 for this type of market."

In determining how many lanes a given area can support, over the years there was, and is, a formula that was generally well regarded as to what the population of an area should be to support new bowling facilities.

Now, here Brunswick says in this report, this is a lanes to person ratio of 780 to 1, this is below the estimated proper ratio of 950 to 1.

Now, the generally accepted industry standard in 1959 and 1960, when we first began to acquire and build our bowling centers with Brunswick's cooperation then, was a ratio of 1,400 to 1; in other words, if there are 14,000 people in a community there should be one lane—I don't mean one bowling center, I mean one lane.

And over the years, as Brunswick began to sell more and more bowling equipment, they began to drop this ratio.

Now, in 1964 when this—1965, they say here, this is—the 780 which they recognized then was the lanes to person ratio in Poughkeepsie was below the 950 to 1 which they considered a proper ratio, but that 950 to 1 was still a ratio that none of us as proprietors considered

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at all appropriate to an area to insure a successful and profitable operation.

Mr. Seeley: I move that that be stricken. If Mr. Lieblich doesn't consider it as appropriate, he can say so, but he can't speak for all of the other proprietors.

Mr. Hoffmann: If anything is stricken, may it be the particular phrase "all the other proprietors"?

The Court: So ordered, and the jury is so instructed.

Mr. Hoffmann: But it was not the sense of the order to strike the answer in any other way?

The Court: Just that particular portion.

Q. Looking at that subject, "Market," on page 5, when the statement is made, "This is below the estimated proper ratio of 950 to 1," that's a statement being made by a Brunswick official; isn't that so?

A. Yes, the gentleman who prepared this evaluation report.

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Q. So he says what the estimated proper ratio for the area is, is that the meaning of that, in his opinion?

A. Yes.

Q. And then when he refers to the population in the designated primary raw area, which results in a lanes to people ratio of 780 to 1, it is he himself, is it not, who is saying that the relationship is below the estimated proper ratio?

A. That's right.

Q. What in your opinion, Mr. Lieblich, would be the proper ratio for a community of this size?

A. 1400 should be the ratio, in my judgment.

Q. And on what do you base that?

A. Just general experience I have had over the years, talking with other people, reading reports, I have talked with Brunswick executives over the years, I have seen just recently a Brunswick announcement on 1500 to 1 as a proper ratio.

The Court: Does that apply to all geographical areas, in your opinion?

The Witness: Generally, yes.

Q. Would you let your eye drop down to the bottom of page 5?

A. Yes.

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Q. Do you notice the sentence:

"This is a highly competitive bowling market"?

A. Yes.

Q. Do you agree with that conclusion?

A. Yes, I can attest to that.

Q. What is your basis for saying that?

A. Well, my knowledge of our—the very strong competition among our center at Holiday with Mardi-Bob and Touponse as well as Dutchess, everyone was trying every year to get bowlers to move back and forth from one center to another. It was a very tough competitive market.

Q. And, sir, looking at the evaluation report in which it says that "this is a highly competitive market," and that there exists a ratio of 1 to 780 of the population, is this a report on which you yourself would have invested money and have acquired a bowling center?

Mr. Seeley: I object, your Honor.

The Court: Why?

Mr. Seeley: Because it is a hypothetical question, hypothetical situation. This is not a report which he had acted on or was asked to act on. It was Brunswick's report to itself. And I don't think that this witness' opinion of what he would

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have done has a proper bearing on Brunswick's right to rely and act on that report.

The Court: I will sustain the objection. I will permit a hypothetical, "Assuming you had this figure—"

Q. Assuming that such a report was submitted to you at a point in time when you were interested in investing in a new bowling center, and assuming that the report further had the same statistics given, that is to say, a declaration that it is a highly competitive market, and that there exists lanes in the ratio of 1 to 780 of the population, would you under such circumstances have invested your money?

A. Never, it would have been disastrous business judgment.

Q. Can you give us the reason for that?

A. Just couldn't possibly support the investment. It had to be a loss.

Q. Would you be good enough to look on page 6, under the heading "Lease"?

A. Yes.

Q. Perhaps you'd be kind enough to read that aloud to us.

A. Yes.

"The landlord is presently balking at the Brunswick

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lease offer of $26,000 gross annually, plus 10 per cent of all gross income over $170,000. This guarantees the landlord approximately $3,500 annually over building costs.

"This building was formerly leased at an annual gross rate of $36,000."

Q. Do you have any information as to whether or not the Brunswick lease offer of $26,000 gross annually, et cetera, became accepted by the landlord?

A. Yes.

Q. What is your basis for that?

A. Documents that we received from Brunswick, and I believe also it showed in their profit and loss statements from operating Dutchess, they paid $26,000 a year rent.

Q. Are you familiar with the premises described in the report?

A. Yes.

Q. You have seen it on different occasions; that was your testimony?

A. Yes.

Q. That's the premises of LeMar or the Dutchess Lanes; is that what we are talking about?

A. Yes.

Q. Now, sir, what was the center like, not just in terms of what you described as its interior, but in

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terms of whether or not it was a readily rentable building; what kind of building was it?

A. It was a free-standing structure.

Q. Was it a structure designed for use as a bowling center?

A. Yes.

Q. Is there a phrase that describes that kind of structure?

A. Yes, sir.

Q. Among real estate people?

A. Yes.

Q. For yourself as well?

A. Yes.

Q. What is that phrase?

A. It is called single purpose.

Q. What is the meaning of single purpose building?

A. Well, generally, without some additional capital investment for renovation or restoration of the premises, generally suited for that one purpose.

Q. Now, then, does it follow that if Brunswick had not accepted this lease, that the landlord would have a piece of property which was empty and usable only for a bowling center?

A. Not necessarily, no.

Q. Why not?

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A. Well, in my experience, we have had a building, bowling building, that was sold to a bank, and they converted it for other uses.

I know of many former bowling establishments that are used as furniture stores or discount centers.

Q. But before that would happen it would have to be renovated in some way, would it not?

A. Yes.

Q. Generally speaking, there is a large open interior area where there are lanes, isn't that so, in a bowling area?

A. Yes.

Q. Was that also so at the Dutchess Lanes?

A. Yes.

Q. Do you know of any ready use to which such a center could be put other than bowling, and without renovation?

A. No.

Q. Mr. Lieblich, again in this report, under the heading "competition—"

A. What page?

Q. Page 5, last paragraph.

A. I see it.

Q. "There are four competitive commercial lanes in this market area."

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Now, these are the ones you described, are they not?

A. Yes.

Q. Can you list them again so we don't forget?

A. Ours would be one, there are Touponse, Mardi-Bob, Hoe-Bow, and I believe that they would consider here Hyde Park, rather than Touponse, which was below us, those would be the four.

Q. Do you have—are you able to describe the locations of these centers in terms of distance apart or time consumed in driving one from the other the way you did yesterday in relation to Pueblo?

A. Yes. On page 15 of the report it gives the distances, and I would say from my own knowledge, this is essentially correct, it shows Hoe-Bow as three miles from Dutchess Lanes, and Hyde Park was six miles from Dutchess Lanes, Mardi-Bob was two and a half miles from Dutchess Lanes, and our Holiday Bowl-O-Mat was eight miles from Dutchess Lanes.

Q. Now, these are descriptions given by Brunswick in its evaluation report; is that right?

A. Yes.

Q. And do you concur; are they accurate?

A. Yes.

Q. Now, sir, in terms of time, have you any way of telling us whether all of these centers are reachable

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one from the other within, say, 20 minutes?

A. Yes.

Q. That is, in an automobile, of course, not on foot?

A. That's true.

Q. And are there good interconnecting roads in this area?

A. Yes. The furthest apart is ours from Dutchess, but probably it is probably the faster to get to because of the fine highway that was built, we are right on Highway 9, and there was a new interconnect which went right into downtown Poughkeepsie, and that's where Dutchess was located, in downtown Poughkeepsie.

So they are all within 15 minutes really of each other.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as Plaintiff's Exhibit 11 for identification a one-page summary headed "Holiday Bowl-O-Mat," showing a breakdown of figures for the years 1965 to 1972?

(Exhibit P-11 marked for identification.)

The Court: Would you look at it, Mr. Seeley, and let me know whether there is any objection to it? It is comparable to P-9 except it involves Wappingers Falls, is that correct?

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Mr. Hoffmann: Yes.

Mr. Seeley: No objection.

The Court: P-11 into evidence, and we also have copies made for the jury.

Mr. Hoffmann: Right here.

(Exhibit P-11 received and marked in evidence.)

Mr. Hoffmann: May the record reflect that this was computed by the witness from records in a manner similar and from similar records from those described in connection with the similar exhibit for Pueblo?

The Court: How do you like the service?

Mr. Hoffmann: Excellent. We're most grateful.

By Mr. Hoffmann:

Q. Mr. Lieblich, would you look now at Plaintiff's Exhibit No. 11?

A. Yes.

Q. This is designed to do the same things that the similar exhibit in relation to Pueblo was designed to do; is that so?

A. Yes.

Q. What is that?

A. This shows that at our Holiday Bowl-O-Mat for each $1,000 of bowling revenue our income would increase by $1,328. And the same procedures were applied here as

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they were in Pueblo.

The differences, of course, are the variances, the variances from the books and records of Holiday.

This reflects our eight-year experience in Holiday in our bowling revenues, our shoe rental revenues, snack bar revenues, bar revenues, our pro shop revenues, our machine and miscellaneous revenues, and our experience of profit in running the bar and snack bar, and the bottom is the same analysis as I described earlier with respect to Pueblo.

Q. Now, this is an experience, is it not, based upon what has actually happened in Holiday?

A. Yes.

Q. And the last figure on the bottom of the page is $1,328?

A. Yes.

Q. At least looking at it from top to bottom that's the last figure on the page.

And again, the heading is "For each additional $1,000 of bowling revenue, net income increases"?

A. Yes.

Q. Now, is it fair to say that for each such $1,000 the net income increases $1328; is that the meaning of it?

A. Yes, or if there was 10,000, it would be $13,280.

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Q. If it was 100,000?

A. 132,800.

Q. And that experience factor is in this chart for eight years; is that not so?

A. Yes.

Q. The full history of Holiday?

A. Yes.

The Court: Why is your bar figure so high?

The Witness: As I mentioned earlier, we have at Holiday the largest cocktail lounge that we have in the whole chain. We have entertainment there several days a week.

Q. Is there any real difference, Mr. Lieblich, that's discernible to you between this experience and the Pueblo experience in the sense that one function produces a good deal more revenue than another?

A. Only to the extent that, as his Honor just pointed out, that our cocktail lounge revenue is much higher in Holiday.

As I said to the jury earlier, we have in Holiday the largest cocktail lounge we have in our whole chain. It is a very elaborate room, and we have entertainment there three or four nights a week, and on some occasions we have had it as many as five nights a week.

Mr. Hoffmann: May I have marked as P-12 for

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identification a sequence of numbers under the heading of "Holiday Bowl-O-Mat," purporting to show income or loss?

(Exhibit P-12 marked for identification.)

• • •

Mr. Hoffmann: I will follow your admonition.

The Court: Now that the jury has it, into evidence.

(Exhibit P-12 received and marked in evidence.)

Q. Mr. Lieblich, would you be good enough to look at the first column, "Nine months, 8/31/61."

Does that represent a fiscal period of the history

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of Holiday Bowl-O-Mat?

A. We acquired this in December 1960, and since our fiscal year is August 31, this would reflect the nine months that it operated under our operation.

Q. And then the next year is the first full year; is that right?

A. That's right.

Q. That's the one ending 8/31/62?

A. Twelve months. Each year thereafter, the full twelve months.

Q. Now, going down the column, again, you have in this nine-month period, "Lineage per lane 10,831."

What does that entry mean?

A. The actual games bowled per lane at Holiday during that year.

Q. And then——

A. To get the total you multiply it by 36 lanes. We have 36 lanes, but that's per lane.

Q. And then you have cash, "Operating cash income."

A. Yes.

Q. Would you explain that phrase, please?

A. Yes. That was the difference of the cash receipts and that which we had to pay out for our bills, except on the interest.

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Q. And then "Interest" for $8,011?

A. Yes.

Q. Can you state what that figure is, that's interest on what kind of property?

A. That was interest on whatever debt we owed, that the subsidiary had, equipment obligations of wherever the interest might have been during that year.

Q. That would include equipment obligations?

A. Yes.

Q. That would include the pinsetters and the lanes?

A. No, it was AMF's, so we didn't—AMF, unlike Brunswick, leased the pinsetters, but we did purchase from Brunswick and from AMF the lanes.

There came a point in time also where AMF did make available to its customers on a sale basis for a very short period of time the purchase of their pin spotters, and we did in Holiday at some point in, I believe, 1962, when AMF made the offer, we bought from AMF 24 of the 36

lanes that we had leased and we have continued to lease since that date the additional 12 lanes in the center.

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Q. And then you have a figure for depreciation beneath that.

Is depreciation an item which you—is it computed here in the way that you explained it in the past?

A. Yes, it would be a little bit different because we have AMF equipment rather than Brunswick.

Q. But does it reflect the expectable life of the equipment?

A. Yes.

Q. And then, sir, organization expense.

A. Yes.

Q. What does that refer to?

A. When a company is first organized there are some additional start-up costs, legal fees, accounting fees, that sort of thing. That's what is called organizational expense, and it is normally written off over the first five years of the life of the company.

That's why after five years that organizational expense trails off to zero.

Q. Then the bottom line here, "Income," and then, "Loss," in parenthesis, if you would run your eyes across the figures for 1961, 2, 3, 4, 5, 6 and 7, those are positive income; is that right?

A. Yes, those are the years of profit.

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Q. Then, 1968, 9, and 1970, and the entry is in parenthesis; is that not so?

A. Those are years in which we had losses.

Q. Now, sir, going through this as we did with Pueblo, can you give us an explanation as to why the profit figure became losses in the 1968 fiscal returns?

A. Yes, I think I can, sir.

Holiday was generally a profitable operation. In—the profit began to drop off considerably between 1964 and 1965. We had a profit in 1964 of $38,499. The next year our profit dropped to $17,140.

It was in 1965 that Brunswick took over and began to operate the Dutchess Lanes. Once again, as in Pueblo, their competition was more severe than under the direction of Mrs. Levine when she operated Dutchess Lanes.

Finally, then we went from a loss—from a small profit, to a very significant loss.

In 1968 we lost $39,000.

In 1969 we lost $51,000.

Then in 1970 our loss dropped considerably, to $27,000.

And then we began to make a nice profit again, small profit, in 1971, and last year a very consider-

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able profit. The reason that the last two years have shown this very dramatic reversal is that Brunswick, after operating Mrs. Levine's center for four years finally shut it down. They shut it down in 1969.

And the result is rather clear in our figure. The first year after Brunswick shut it down our loss dropped from 51,000 to 27,000. It was shut down so late in the year that we weren't able to organize some of the leagues that we might have had had it been shut down six months before that.

So really, 1971 was the first good year where we were able to see the benefit of having Dutchess Lanes out of

business. And we improved from a $27,000 loss in 1970 to a small profit of $1800 in 1971.

Last year, August 31, 1972, reflects a fine profit of $47,000, and the year now underway shows a much more positive improvement even over last year.

The Court: Population conditions stationary as far as the operation for your Bowl-O-Mat were concerned?

The Witness: Essentially so, yes.

The Court: Entertainment, etc.?

The Witness: Yes. There was a year or so where the Poughkeepsie area was a little depressed, IBM moved some of their people from

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one of their plants, but it was essentially identical.

I think the population in the last two years has begun to improve a bit in the Poughkeepsie area.

Q. Mr. Lieblich, can you tell us whether or not the other bowling centers to your knowledge who were located in the same market experienced any losses after Brunswick took over Dutchess; do you have any knowledge of that?

A. No, I don't.

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Q. I would now like to shift your attention, if you will, Mr. Lieblich, to the center which is operated under the name of Paramus Bowl-O-Mat. Would you please describe the market area in which that center is to be found?

A. Yes. This is easier than talking about Poughkeepsie or Pueblo, since this is my home area. I am sure the jury, too, knows the Paramus area. Our center opened in Paramus——

The Court: What is the name of it?

The Witness: Paramus Bowl-O-Mat. Actually, Garden State Paramus Bowl-O-Mat, Inc., but we

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call it Paramus Bowl-O-Mat.

A. (continuing) This was the second bowling center with which I had any direct connection. And it opened in the summer of 1958 in the large shopping center that R. H. Macy was then constructing, now known as the Garden State Plaza Shopping Center. That's where Bamberger's has its big store, and Gimbel's has a big store. It is located right at the intersection of Route 4 and Route 17 in Bergen County. It is one of the largest shopping centers in the United States.

We do not have a free standing building. I have used that word before. A free standing building is a separate structure. There we are in a downstairs location. You have to go down a flight of about 10 or 12 steps.

We have some columns, not many. It is not as—I think I have answered the question.

Q. This center is a plaintiff in the proceedings, is it not?

A. Yes, it is.

Q. And it is one of the wholly owned subsidiaries of Treadway?

A. Yes, it is.

Q. The same as the others you described. Can you tell us when it became a subsidiary of—not

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Treadway then, but, of course, the predecessor of Treadway?

A. It became a subsidiary of National Bowl-O-Mat when National Bowl-O-Mat became a public company in the Spring of 1961.

Q. Did you mention that there were some 36 lanes?

A. Yes, I did, 36 lanes, and 36 automatic——

Q. And these pinsetters are of Brunswick make, is that your testimony?

A. Yes, these were purchased from the Brunswick Corporation.

Q. Are they of the A-1 type?

A. Yes.

Q. That is to say, the original automatic pinsetting equipment which you described yesterday in your testimony?

A. Yes.

Q. And the approximate cost of each pinsetter, how much was that?

A. $8,100.

Q. And were the lanes also purchased from Brunswick?

A. Yes, they were.

Q. And how much was the cost of those?

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A. Approximately $4500 per lane, times 36.

The Court: What did you say at the end?

The Witness: Times 36.

The Court: How much was each lane again?

The Witness: About $4500, and the pinsetters, $8100.

Q. Coming back now to the competitive market in which you say you function, what was the nearest center to Bowl-O-Mat, Paramus?

A. When we opened in 1958?

Q. Yes.

A. I think there was just one then in being. Frank Esposito, a very well known building proprietor in New Jersey, and throughout the country, had, and has, a very successful operation on Route 17, just about two miles north of us.

The Court: What do you call it, sir?

The Witness: Paramus Bowl.

Q. And thereafter, when did your next nearby center spring into being?

A. Well, as bowling became so popular, in the late 1950's and the early 60's, quite a large number of additional centers came into being. I can think of Fair Lawn Lanes, which has 32 lanes——

Q. Pardon me. How far away is Fair Lawn?

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A. It is the next community. Paramus and Fair Lawn border each other.

Also, in Fair Lawn, right on Route 4, there was a place called Route 4 Bowling. That has about 16 lanes, if I remember properly.

Then there was Interstate Lanes up in Ramsey, which is a little further away. That has 40 lanes.

The Court: Wait a minute. Isn't Ramsey quite a distance from Paramus?

The Witness: Well, it is not that far, sir, on Route 17. It's about 15 minutes away on the highway.

A. (continuing) Between Ramsey and ourself, and Mr. Esposito's center, there is a Club 300.

Going a bit around us——

The Court: How many lanes for Club 300?

The Witness: I think it is 40, sir.

A. (continuing) Around us in Hackensack, there's a place called Bowler City. That has 50 lanes.

In East Paterson there is a place called Martone's Lanes. And I think that has 24. I have records to be sure, but that is my present memory.

Then, also in our competitive area there are 40 lanes in Lodi, called Lodi Lanes.

I think I have covered all of the centers that I think are in our competitive area.

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Q. Thinking of what you call competitive area, can you tell us, in terms——

A. Oh, excuse me, sir. I forgot one other one, which is only a quarter mile away from us. And that's Ten Pins. That is one of the ones Brunswick——

Q. Called Ten Pins on the Mall?

A. On the Mall. That is located in the center that Stern Brothers built. That's another very large shopping center right next to the Garden State Plaza shopping center.

The Court: How many lanes?

The Witness: That has 36.

Q. Thinking of these centers in terms of time by automobile between them, could you describe the outer limits of time to go from one center to the other?

A. Yes, sir. I think Judge Whipple pointed it out—Ramsey is probably the furthest away from Paramus in miles, yet in time it is not very far, because you can just go right up Highway 17. I would say that it is only 15 minutes to get from our place to Ramsey, depending on traffic, of course.

The Court: What geographic area do all these lanes encompass, the nine lanes?

The Witness: Probably, sir, a radius——

The Court: Ten miles, fifteen?

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The Witness: I would say so, sir. It is so hard to pin down because there is a very large industrial park, as an example, in Fair Lawn, where Nabisco has a large plant, and other people. It is just one area. It could be that the Nabisco league might be bowling up in Interstate and Ramsey, or could be bowling in our center, or Frank Esposito's. It is just one metropolitan complex, sir.

Q. Now, if I understood your testimony, this was a center you acquired from someone else, is that right?

A. Well, it is one that I have organized myself with my——

Q. Then through the process of corporate change, it was acquired, was it not, by the National Bowl-O-Mat organization?

A. That is correct.

Q. Did you at the time when NBO acquired National Bowl-O-Mat have any experience in running the center, had it been running for a while?

A. Oh, yes, it was running from 1958 until the spring of 1961, when National Bowl-O-Mat became a public company.

Q. Can you tell us whether or not it had been a profitable operation?

A. Very profitable.

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Q. And was the same true after National Bowl-O-Mat acquired it?

A. Yes, sir; it remained quite profitable for several years.

Q. Did there come a time when, in that area that you described, National Bowl-O-Mat sought to acquire any additional bowling centers?

A. Yes.

Q. Can you tell us when that happened?

A. Yes, there were two centers that we sought to acquire. It came to our attention in 1962 that another center was going to go into the Stern Brothers shopping center. That's the Bergen Mall. And after some discussion with Brunswick I thought we would be better off if we had that center, so we could run it in conjunction with our 36 lanes.

And we had several discussions. I hired architects. And we were preparing to acquire that for an opening in 1963. For certain reasons that didn't materialize.

Then on another occasion, after Brunswick took over Fair Lawn Lanes in 1965, at the bankruptcy sale of American International Bowling Corporation—that's when Brunswick first acquired about 30 centers all at one time—I spoke with Mr. Milton Rudo of the Brunswick Corporation, expressing our interest in acquiring Fair Lawn Lanes, since it

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was so close to my home in Paterson and our other center. I wrote to him on another occasion about Fair Lawn Lanes. But apparently they didn't want to sell it. And that was the end of the discussions.

I think those are the only two centers. At one point the owners of Eclipse came to my office to see if we would like to buy their center, but I don't think I ever had any serious discussion. I think at one time I saw the figures on Lodi Lanes, when they were in some financial difficulties. But we didn't acquire that, or talk further about it.

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[401]

Q. Mr. Lieblich, before the recess you mentioned the centers which were competitive with Paramus Bowl-O-Mat; is that right?

A. Yes.

Q. To your knowledge are any of those centers owned or operated by Brunswick?

A. Yes.

Q. Would you tell us which ones they are?

A. Yes. In the Paramus area, Brunswick Operating Division has been operating for quite a few years about four different centers. One is Fair Lawn Lanes, with 32 lanes, it's been operating that one since early 1965.

Another one they have been operating since early 1965 is Interstate Lanes up in Ramsey.

For the last few years they have been operating—

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when I say "they" I mean Brunswick Operating Division—the center just a quarter of a mile away from us, Ten Pins on the Mall, in Paramus.

And also for the last few years they have been operating the 40 lanes at Lodi Lanes.

So there are four centers in the Paramus area that Brunswick operates competitively to our center in Paramus.

The Court: How many in Ten Pins?

The Witness: 36.

The Court: Interstate?

The Witness: 40.

The Court: Lodi?

The Witness: 40.

Q. Mr. Lieblich, was Ten Pins previously owned by someone else, do you know?

A. Yes.

Q. Who was that?

A. A fellow that I knew by the name of Tommy Granatelli. Tommy had another partner, but I forgot the other partner's name, but Tommy had almost all of the money involved in its ownership.

Q. Did you yourself have any interest in that center?

A. Yes.

Q. In what way, sir?

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A. Well, Tom Granatelli called me, and then his accountants called me and conferred with me, as to our interest in taking over his center after it had gotten into a good deal of financial difficulty.

I sat with Tom and his accountants, and he showed me all of his figures, and as a result of my looking at those figures I decided that we couldn't possibly make a go of the operation of Ten Pins on the Mall. That was the end of our discussion.

Q. What underlay your conclusion that you just described that as result of looking at the figures you decided you couldn't make a go of Ten Pins on the Mall; what was it that you saw that led you to that conclusion?

A. They had 36 lanes in Ten Pins on the Mall, and we had 36 lanes, we each had Brunswick equipment, we are both in shopping centers, we both had downstairs locations, I knew that we were doing very poorly, and Mr. Granatelli's company was doing just as poorly, and he showed me his figures, and they were unable to make their payments to Brunswick.

I just couldn't see how it could be turned around to profit in those years. I think these conversations were during 1965 and 1966.

Q. You said that it was acquired by Brunswick.

[404]

Do you know when that happened?

A. Yes, I think that Brunswick began to operate Ten Pins in about 1968. I think about 1968.

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[405]

Mr. Hoffmann: Your Honor, would you be good enough to have the Reporter read the last question.

The Court: This is the wrong reporter.

Mr. Lieblich testified that he was contacted by Mr. Granitelli, to sell the place, but he turned it down, "they were doing poorly and we were doing poorly." It happened during 1965 and 1966.

I think that was roughly your testimony.

The Witness: Yes, sir.

By Mr. Hoffmann:

Q. And I think I asked the final question, which was: If you had knowledge, when did Brunswick acquire it?

A. Yes. In either 1968 or 1969.

The Court: You are talking about Fair Lawn, right?

The Witness: No, sir. Ten Pins on the Mall.

The Court: Yes.

Q. In the same marketing area, there were

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two other Brunswick centers, is that right, one Fair Lawn—Fairlanes—and one Interstate.

A. There is a third. There is also Lodi.

Mr. Hoffmann: Will you please mark P-13 a Bowl-O-Mat Paramus, indication of income and loss.

The Court: P-13, Paramus Bowl-O-Mat.

(Exhibit P-13 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 13 for identification and will you describe what it is, please.

A. Yes. Its heading is Bowl-O-Mat Paramus. This is the result of the eight years of experience in the operation of Paramus from 1961 through August 31 of 1972. It shows our lineage per lane, our cash income, interest, depreciation, organization expense, and finally the profit or loss of the company for each year.

Q. And this exhibit for identification is prepared in the same way as similar exhibits in relationship to Holiday and Pueblo, which you described earlier today were prepared, is that your testimony?

A. Yes, sir; it all comes from our books and records.

Mr. Hoffmann: I offer it, your Honor,

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into evidence.

Mr. Seeley: No objection.

The Court: P-13 into evidence.

(Exhibit P-13 received into evidence.)

The Court: Do you have copies for the jury?

Mr. Hoffmann: Yes.

(Exhibit distributed to the jury.)

Q. Mr. Lieblich, can you, by going across the last line, which represents income loss, indicate the years in which this was profitable, this center?

A. Yes.

Q. What were they?

A. In 1961 Paramus had a profit of $37,746. In 1962 it had a profit of $17,419. In 1963 it had a loss of $3,922. In 1964 it had a profit of $14,840. In 1965 it had a loss of $1,644. And beginning 1966 the losses began to increase, so that in '66 the loss was $39,894. In 1967 it was $48,649. In '68 it was $63,857. In '69 it was $55,409. In '70 it was $55,153. And in '71 it improved to a loss of $44,536. And still further improvement was shown last year, but we still lost $10,542. So, after the successful initial profitability of the company, its cumulative loss in this period is over $250,000.

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Q. It lost consistently from '65 on to the present, is that so?

A. That is correct.

Q. Do you have any explanation for why, after showing some profit in '62, a loss developed in the year '63?

A. Yes. Our lineage decreased from '62 to '63. That was the year that Ten Pin Bowl was operating for its first full year, if my memory is correct.

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Q. And then your year of '64, unlike '63, shows a profit. Can you explain that for us?

A. Yes. That was not a result of better bowling, because the lineage per lane decreased from 10,570 in '64 to 9,355 lines in '65. The reason for the swing—excuse me. I have used the wrong figures.

Q. You are looking at the——

A. Yes, sir. The difference between '63 and '64. Lineage did not increase. So the improvement was not as a result of more bowling. In 1963 we did 11,250 lines per lane and in 1964 we dropped to 10,570. The reason, then, for the difference was—I think it was that year that we received some reduction in rent from the R. H. Macy Company, that still owned the shopping center, and because of the financial difficulties that we were in, I met with one of their senior vice presidents and we were able to get a rental reduction.

Q. Now, if you would be good enough to look at the lineage figures, starting in the following year, in '65, they all seem to go down, is that correct, until you reach 1971?

A. That's right.

Q. Now, sir, to what do you attribute this drop in lineage?

A. Well, several factors. A very primary one was the

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fact that beginning in 1965 Brunswick began to operate

Fair Lawn Lanes and Ramsey competitively to us. I think Lodi Lanes was a late opener. And that probably had some effect, too. Certainly the operation of the Brunswick centers was tougher competition for us. Again, they were able to offer certain inducements, which we couldn't do. And the first thing——

Mr. Seeley: Your Honor, I would like to strike that as a conclusion. If he cares to name the things they did, all right, but broad——

The Court: It will be stricken and the jury instructed to ignore it.

Develop it.

Q. You said that they were able to offer certain inducements, Mr. Lieblich. Will you tell us what those inducements were?

A. Well, I recall specifically after Brunswick got in the operating business in 1965, during that summer they had a very widespread program of inducing—in order to induce young people to come into the centers to bowl. And they had a very cut rate price on bowling. This was not just in Paramus. I remember visiting Bill Kenny in Pueblo. I picked up in the Brunswick center in Pueblo the same leaflet that I picked up in the Brunswick center at Fair Lawn, and it was a very reduced price, almost

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40 or 50 per cent under what we were charging the young people to bowl at that time. That's the sort of inducement that I recall now that affected us.

Q. Can you think of any others?

A. I think also in that summer—I may be in error—they embarked upon an important promotion to send people to Europe if they bowled in Brunswick centers.

And all the Brunswick centers around the country were participating in that.

Q. Did you offer any comparable incentives for bowling, comparable to a trip to Europe?

A. No, sir; that would have been too expensive for us to have funded.

Q. Now, sir, do you know offhand how many lanes were under Brunswick or BCOD control in the Paramus market?

A. Yes. I made a list of all the lanes and I gave that to you, Mr. Hoffmann.

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Q. Is this the list to which you refer?

A. Yes.

The Court: P-14 for identification.

Mr. Hoffmann: It is a sheet entitled "Paramus Market," with a heading entitled "Number of Lanes, Name of Centers, Distance from Bowl-O-Mat." There is also other information on it.

(Marked Exhibit P-14 for identification.)

Q. Can you tell us how this was prepared; was it prepared by you?

A. Yes, it was prepared by me, consultation by our staff and our bowling division.

Q. You indicate the number of lanes for the number of different centers in the market. How did you have that information?

A. Well, I have been in and out of these places on various occasions during the last 12 years.

Q. You made note of the number of lanes on there?

A. Yes, fairly common knowledge in the area how many lanes each of these properties has.

Q. The relation to the distance from Bowl-O-Mat, how do you know that?

A. I have driven it myself.

Q. Have you made note of the distance while you were driving?

[413]

A. Yes.

• • •

[415]

The Court: Before we go any further, if I understand P-14, perhaps this would be of some assistance to the jury also, that only applies to the year 1973 with regard to these various bowling centers?

The Witness: No, sir. Since 1963 or '4 every one of these centers have been in operation. Brunswick's takeover of the first four has varied, as I said earlier——

The Court: Ten Pins, Lodi, Fair Lawn and Interstate?

The Witness: Yes, they took over Fair Lawn and Interstate in 1965, they took over Ten Pins in, I believe, 1969, and, sir, I think they took over Lodi in either 1969 or 1970.

The Court: Interstate, do you know?

The Witness: 1965.

The Court: What about the rest of them?

The Witness: Those have all been opened since 1963.

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The Court: Are they owned by Brunswick?

The Witness: No.

The Court: They are individually owned by the names thereon?

The Witness: Yes.

The Court: The first four alleys are owned or controlled by——

The Witness: They are operated now by Brunswick.

• • •

Q. In answer to a question put to you by Mr. Seeley you said this was prepared and reflected what you saw in 1973; is that right?

A. Yes.

Q. Do you know of any significant change which would affect the vitality of this exhibit or the accuracy of this exhibit, say, five years before?

A. All of the centers weren't then in operation, because as I just said to his Honor, Brunswick wasn't operating Ten Pins or Lodi five years ago.

Q. But the businesses were the same?

A. Yes.

Q. And the number of lanes, to your knowledge,

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has there been any significant change in that?

A. Only one small change. Frank Esposito had more than 38 lanes a few years ago, but he cut out about four lanes, and he converted that to office space in his bowling

center, so the 38 lanes for Esposito was some years ago, it was a little higher.

Q. Now, Mr. Lieblich, I address your attention to the division, I think that's called long division, on the bottom of the page?

A. Yes.

Q. What have you done there?

A. Well, there are 148 lanes in the Paramus area which Brunswick now operates.

Q. That's shown on the side; is that right?

A. Yes. Total 148. That's the total of the number of lanes that Brunswick is now operating in its BCO division in the Paramus area.

Q. And then, sir, you took 384.

A. Now, the—below that I have listed the number of lanes in all of the other centers, including our 36, in this primary area, that's 236 lanes that the independent proprietors now operate, totalling 148 of Brunswick and 236 of the independent proprietors, that's 384 lanes.

I have then divided the 384 lanes into the 148 lanes that Brunswick operates, which gives Brunswick 37 per cent

[418]

of the total Paramus market.

Q. Now, do you know whether or not Brunswick had articulated any principle having to do with the percentage of centers or lanes which it should operate in a populous area?

A. Yes.

• • •

[420]

Mr. Hoffmann: The pending question is does he have any knowledge.

The Court: I will permit him to answer that yes or no.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Record read.)

By Mr. Hoffmann:

Q. Mr. Lieblich, can you tell us from what representative of Brunswick such an articulation came?

A. Yes.

Q. Who was that?

A. The president of their bowling division, Mr. Milton

[421]

Rudo.

Q. Can you tell us what it was that Mr. Rudo said?

A. Yes. He said that in the opinion of their lawyers, if Brunswick operated more than—or approximately 25 per cent of the lanes in any area, it might constitute a—or would constitute a monopoly.

Q. Anything else you recall about his statement?

A. Yes. This was in connection with a discussion about the number of centers that Brunswick was then operating a few years ago in the San Fernando Valley in California, and Mr. Rudo said that they backed off on taking over one additional center in that valley because their attorneys thought they would then be having too many centers, which might constitute a monopoly.

Q. Now, sir, the final tag line was again on your demonstration of the Paramus market what figure?

A. Brunswick now has 47 per cent of the lanes in the Paramus market area.

Mr. Hoffmann: Would you be good enough, Miss Costello, to mark as Plaintiff's 15 for identification the Paramus Bowl-O-Mat statement of income—sorry—of revenues and net income and other data for the years 1965 through 1972?

(Exhibit P-15 marked for identification.)

[422]

The Court: What center is that?

Mr. Hoffmann: Paramus.

Q. Do you have one?

A. No, sir.

Q. Mr. Lieblich, I show you Plaintiff's 15 for identification and I ask you to tell us what it is.

A. Yes. It is headed "Paramus Bowl-O-Mat."

This is the history of the revenues of our Paramus operation for 1965 through 1972. It shows for each year the bowling revenues, shoe rental revenues, the snack bar revenues, the bar revenues, and the machine and miscellaneous revenues.

It has after it the same category that we had in the prior documents on Holiday and Pueblo. It reflects net income per cent after cost of goods and labor, and it has a paragraph for each additional $1,000 of bowling revenues, net income increases for here a total in Paramus of $1,140.

Q. And was this prepared in a way similar to your testimony concerning other exhibits which related to Holiday and to Pueblo, and which showed the net income and the amount of increase for each additional $1,000 of bowling revenue?

A. Yes, in the very same way.

Mr. Hoffmann: Your Honor, I now would like

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to offer Plaintiff's 15 into evidence.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P15 received and marked in evidence.)

Mr. Hoffmann: With your consent I'd like to spread these before the jury. I am a little short of copies at the end, but there are three here.

Perhaps the jury would care to look at them.

I think if they would be good enough to look over each other's shoulders, I won't dwell long on this exhibit.

Can you all take a look?

(The jurors answer in the affirmative.)

Q. Mr. Lieblich, do you have a copy of this?

A. No, I don't.

Q. Well, then, maybe we will work together.

The Court: No. 6 can use his, they can share it.

Mr. Hoffmann: Thank you, I appreciate that.

Q. Now, Mr. Lieblich, you have after indicating in the margin "Bowling, shoe rental, snack bar, bar, machine and miscellaneous," totalled them, have you not?

A. Yes.

Q. What does that totalling constitute for each

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year?

A. Total of the revenues in that bowling center for each of the years.

Q. And so if you look on the bottom line, starting in 1965, there is $264,535, that's the total revenue for 1965 for the Paramus Bowl-O-Mat center; is that right?

A. Yes.

Q. Then they vary somewhat from year to year, do they not?

A. Yes.

Q. But in each instance that's the total of revenue for the year in that line which is on the same level as the $264,535 for 1965.

Then the next column, sir, that's percentage, there is a percentage mark on top?

A. Yes.

Q. Would you tell us what that percentage mark reflects?

A. Yes.

As in the other exhibits, for 1965, our shoe rentals were $5,298, that constitutes 3 per cent of the total of the bowling revenues for that year of $160,692.

Q. And then that computation has been made in similar fashion, has it not, for the other years from

[425]

1965 on through 1972?

A. Yes, sir.

Q. And in the final column at the right is a grand totalling, is there not?

A. Yes.

Q. And in relation to the percentage figure on the last line, what does that reflect?

A. That's an average for the eight years.

Q. The average for each one of these columns, 1965 through 1972?

A. Yes, each category of revenue. That's the average on an eight-year basis.

Q. So that even though there may be differences from year to year, the shoe rentals over that period of time averaged 4 per cent; is that the meaning of the column?

A. Yes.

Q. 4 per cent of the total revenues of the center?

A. Bowling revenues.

Q. And the snack bar, 32 per cent?

A. Yes.

Q. Of the total revenue?

A. Yes.

Q. And the other items, bar, 34 per cent?

A. Yes.

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Q. Machine and miscellaneous, 3 per cent?

A. Yes.

Q. Now, going down to the second part of the demonstration, the net income percentage after cost of goods and labor, would you explain to us what is meant by that?

A. Yes. As I explained earlier, in our bar we have a certain cost of our goods and our labor. The average for the year was 63 per cent. That's what it cost us on an average each year for the liquor we served and the labor, the bartenders and the waitresses, et cetera, which gave us a net profit in the operation of the bar on an average of 37 per cent.

The same arithmetic goes into the snack bar, there our net profit was 15 per cent, which means that over the years our cost of goods and our cost of the ladies or men who work on the ranges in the kitchens and our waitresses was 85 per cent.

Q. Now, in the bottom grouping, "For each additional $1,000 of bowling revenues, net income increases——"

A. Yes.

Q. Would you explain that once more for us?

A. Yes. As I said earlier, we are talking first about $1,000 of bowling income.

As I explained all of that isn't profit, but almost

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every dollar of it is, as I said earlier, our utilities might go up a little bit, or we might have a little more labor cost, but basically there is a very small additional cost.

So for each $1,000, we have taken 90 per cent.

And our shoe rentals, as I explained, if we have larger usage of our shoes we will have to replace them a little bit more, if shoe laces are broken we have to put in new shoe laces. Again, it isn't a full 100 per cent, it is 90 per cent of the income, that's $36.

In our snack bars, our profit is 15 per cent, so taking 15 per cent of the additional $320 that we would receive, that would be $38.

In our bar or cocktail lounge, where our net profit is 37 per cent of all the dollars we take in, we contemplate 340 additional dollars, that would be $126.

Machine and miscellaneous, 3 per cent of 1,000 is $30, and there I already explained since that comes from cigarette revenues, candy machines and pinball machines, and that type of income, we get 100 per cent of that, so that would equal $30.

Adding them all together we'd have $1,140 of net income for each $1,000 of additional revenue.

Mr. Hoffmann: Now, your Honor, again I'd just like to make for the record a statement, I hope that

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I have your approval: that I would want to leave the subject matter of Paramus with the understanding that it is not through oversight, but I will return to it again

probably the first thing on Monday morning, and I'd like now to open the subject of the center in San Juan, Puerto Rico.

Q. Mr. Lieblich, the centers you have described thus far, Pueblo, Holiday, Paramus, these were all separate corporations, were they not?

A. Yes.

Q. And indeed, they are also separate plaintiffs in this lawsuit; is that not correct?

A. That's right.

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[443]

Q. At that point in time, what bowling centers remained in the San Juan area?

A. All the—the two Brunswick-equipped houses, our Paradise Bowl-O-Mat and Star Bowl.

Q. You called them Brunswick-equipped houses. Do you know whether they were automatic pinsetters that Brunswick makes in both houses?

A. Oh, yes, they were identical.

Q. That is, both in Paradise and in Star.

A. Yes, sir; they opened within a month of each other in 1960.

Q. And the equipment was identical in kind; is that your testimony?

A. Identical.

Q. Now, do you happen to know whether or not

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the equipment was sold on standard conditional bill of sale contract?

A. Yes, I had examined the purchase orders that Mr. Cobian and Mr. Carady had when I was talking with them

about purchasing Star in 1961. So I did examine their purchase contract. And, of course, I knew what our contracts were.

Q. Now, in your own purchasing, did you do that by making a down payment to Brunswick and the rest on deferred payments?

A. Well, sir, we purchased the physical assets of our center from a Mr. Harry Woods and a Mr. Gary Wolf. And when we purchased it, we bought it subject to the conditional sale contract that their company had signed with Brunswick eight months earlier.

Q. Well, did the account show, on other purchases, that there had been originally a down payment made?

A. Yes, sir.

Q. And further payments were required under the conditional bill of sale; is that your testimony?

A. That is correct.

Q. Now, in relation to Star, do you have any knowledge as to whether or not Star made an initial down payment and had installment payments to

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come?

A. Yes.

Q. How did you come by that knowledge?

A. I saw their contract. Mr. Carady showed them to me in 1961 when I was negotiating with him to purchase his bowling center.

Q. Do you know anything at all about whether or not Star regularly paid its bill to Brunswick?

A. Yes, I do.

Q. What is it that you know?

A. I know they did not.

Q. And how do you know that?

A. From talking with Mr. Carady and Mr. Cobian and looking at the Brunswick payment records.

Q. What did those records disclose?

A. That we paid many hundreds of thousands of dollars of moneys to Brunswick more than Star paid.

• • •

[453]

Q. On Friday, Mr. Lieblich, you identified and later there was received into evidence Plaintiffs' Exhibit 14.

I show it to you again. This describes the Paramus market.

Now, Mr. Lieblich, at the bottom line there is some long division. This was not done through a computer, was it?

A. No, I did it myself.

[454]

Q. Now, would you do it again for us, please?

It seems to me as if it ought to be redone.

A. Yes, I did it over the weekend. I realized there was nothing wrong with my arithmetic, but with the typing in our office.

I had 39 percent down, and when the girls typed that they mistook the 9 for 7.

Actually, the division gives Brunswick 39 percent of the market, not 37.

Q. It is a larger sum rather than smaller percentage of the market?

A. Yes. If I could correct that in 10, I would correct it.

Mr. Hoffmann: I will ask for the Court's leave.

May this be corrected?

The Court: Yes.

The Witness: Thank you.

• • •

[507]

Q. Mr. Lieblich, did you receive any guidance—when I say you, I mean the Bowl-O-Mat Company—did you receive any guidance from Brunswick concerning the availability of bowlers in the Fort Lauderdale area, prior to your acquiring Fort Lauderdale Bowling Center?

A. Not specifically with Fort Lauderdale. I learned certain guidelines from Brunswick, about one lane to 1400 population.

Mr. Hoffmann: I would like to have marked Plaintiff's Exhibit 25 for identification, another Brunswick survey, bearing on the cover the legend, "Brunswick Bowling Operations Department, Lauderdale Lanes, Inc., Fort Lauderdale, Florida, evaluation 48."

(Exhibit P-25 marked for identification.)

Q. Mr. Lieblich, you have in your hand Plaintiff's Exhibit 25 for identification.

A. Yes, Mr. Hoffmann.

Q. Can you tell us what it is.

A. Yes. It is a Brunswick Corporation evaluation report of Lauderdale Lanes in connection with their taking it over and operating it for themselves.

Q. Have you ever seen it before?

A. Yes, sir.

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Q. Can you tell us under what circumstances.

A. Yes. You gave it to me, Mr. Hoffmann, after you had subpoenaed the Brunswick records and they produced this for you.

Mr. Hoffmann: I offer Plaintiff's 25 in evidence.

The Court: Over the objection of the defendant, into evidence.

(Exhibit P-25 received in evidence.)

Q. Mr. Lieblich, I address your attention to page 5 of Plaintiff's Exhibit 25 in evidence. Do you notice the heading, "B market"?

A. Yes.

Q. Would you be good enough to read it aloud, please?

The Court: From where?

Mr. Hoffmann: From the beginning, "This market has a total population"—it is just two or three sentences, Your Honor.

A. "This market has a total population just under 250,000 people, of which 37,000 are non-white. This leaves us an effective population of 213,000, which should increase to 235,000 by 1970. This gives us a lanes to persons ratio at this time of 975 to 1. This is a reasonable ratio for a recreation minded

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such as this one."

Q. Were you informed by Brunswick at any time prior to the receipt of Plaintiff's 25 that Brunswick regarded 975 to one as a reasonable ratio for persons to lane in the Fort Lauderdale area?

A. Originally Brunswick had given us a figure of 1400 population to one lane. That was back in 1959, 1960,

when I was organizing new bowling centers. Each year thereafter they began to drop the ratio which they thought justified their sale of additional lanes and pinsetters.

Q. Would you look, please, at page 6, to the heading, "D, Competition"?

A. Yes.

Q. I address your attention to the following, "There are six competitive houses with a total of 178 lanes in this market area. Though the lane to persons ratio of 975 to one appears low, an effective program of bowling promotion and good school bowling programs have allowed this area to generate good bowling lineage."

Bearing in mind that this exhibit bears a date of February 8, 1965, Mr. Lieblich, does the statement there comport with your knowledge of conditions in the Fort Lauderdale area?

[510]

A. Well, sir, yes and no. The first part—they say the lane to person ratio of 971 to 1 appears low. Yes, I agree. But then they say, "An effective program of bowling promotion and good school bowling programs have allowed this area to generate good bowling lineage." That's absolutely untrue.

Q. Why do you say it is untrue?

A. Well, I know from our experience, and the experience of the other proprietors down there, everyone was losing their shirts.

• • •

[532]

Q. Now, Mr. Lieblich, did you at any time thereafter operate a center in the Fort Lauderdale area?

A. No.

Q. Mr. Lieblich, do you know what happened to the Fort Lauderdale Bowl-O-Mat center after you left?

A. Yes.

Q. What was that?

A. Brunswick took it over, and it is now operating as part of their BCOD division.

Q. About when did that happen?

A. I think it was either March or April of 1965.

Q. How many lanes, again, was that center?

A. 40.

Q. And your testimony was that Brunswick had also Imperial in the same area; is that right?

A. Yes, about the same time Brunswick took over Imperial, I visited both places on several occasions since then to see if they are still operating it, and they are.

Q. How many lanes is Imperial?

A. 54.

Q. Do you know whether Brunswick has any other centers in the general Fort Lauderdale area?

A. Not that I know of.

[533]

Q. Do you know what the total number of lanes available for bowling in the area is?

A. Well, in the market area, Manor has 20—I will add them—Manor has 20, Flamingo has 24, our old Fort Lauderdale Bowl-O-Mat has 40, Imperial has 54, and West Hollywood has 32.

That's a total of 170 lanes in the area that are in my judgment in the primary market.

Q. How many Brunswick lanes again?

A. Brunswick has 94. That's over 54 per cent of the area.

Q. Of 174?

A. Of 170.

The Court: Better than what?

The Witness: 50 per cent.

Q. A good deal more than the 25 per cent that counsel advised against; is that not so?

A. Double that, sir.

• • •

[535]

Q. Mr. Lieblich, when did you first learn that Brunswick was going into the business of operating bowling centers?

A. In January of 1965 it first came to my attention that Brunswick was setting up procedures to go into the operating business.

Q. Under what circumstances did you get that information?

A. It was just general knowledge in the industry that Brunswick was setting up a training program for a lot of managers. I think one or two of our managers had been approached. In one way or another it got to our attention that Brunswick was taking certain steps to go into the operating business.

Q. Did Brunswick make any formal statement or announcement about this?

[536]

A. Yes. After they took over a good number of centers in the Spring of 1965 there was a formal statement made by the president of Brunswick Corporation, at a meeting of the Bowling Proprietors of America, at their annual convention.

Q. Where did that meeting take place?

A. In San Juan, Puerto Rico, at the Sheraton Hotel.

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Q. And about when did the meeting take place?

A. In June of 1965. I guess it was about the third week in June, 1965.

Q. Did Mr. Hanigan make his statement in person; did he address the meeting in some way?

A. Yes, each year at the annual meeting of the Bowling Proprietors, time was always made available by the organization to Brunswick as well as to AMF so they could speak to the proprietors about things that were happening which would be of interest to the proprietors.

Often they would talk about new products they were bringing out or new promotional programs, whatever Brunswick or AMF thought would be of interest to the proprietors was to be discussed or recorded by them during the time allotted to them during the annual convention.

Q. And these bowling proprietors, about how many, if you can recall, were present at this meeting in San Juan in June 1965?

A. Several hundred. It was a very large turnout at the convention.

(Exhibit P-27 marked for identification.)

Mr. Hoffmann: I have asked Miss Costello to mark P-27 for identification, a document entitled "Open Convention Session, Hanigan discussions Brunswick," and below in the bottom, identification,

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Bowling Proprietors.

Q. Mr. Lieblich, I show you Plaintiff's Exhibit for identification number 27, and I ask you if you have ever seen this before?

A. Yes, I have.

Q. Would you tell us under what circumstances it first came to your attention?

A. Yes. This is a copy of the article that appeared in the magazine published by the Bowling Proprietors Association of America. It is called the Bowling Proprietors Magazine.

And this article appeared in their July-August 1965 issue.

Q. Can you tell us whether this article fairly and accurately reports what Mr. Hanigan had to say at the meeting in San Juan in July of 1965?

A. Yes, it is a reprint of Mr. Hanigan's address to the convention in June of 1965.

Mr. Hoffmann: I offer in evidence Plaintiff's Exhibit 27.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-27 received and marked in evidence.)

Q. Now, Mr. Lieblich, have you had occasion to

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just look this over now?

Well, let me guide you, if I may.

Would you look at page 2, please?

A. Yes.

Q. Do you notice a box which says "Resolution expresses BPAA concern——"

Mr. Seeley: Your Honor, I did not realize the entire contents of the exhibit. I have no objection

to any of it except this insert in the box that he speaks of.

As to that, I would like to make an objection on the ground that it is irrelevant and prejudicial.

The Court: Let me read it first.

(Counsel approached side bar, and the following proceedings were had without the hearing of the jury:)

The Court: Why should I permit it?

Mr. Hoffmann: This Bowling Proprietors article prints verbatim what Mr. Hanigan had to say. This resolution is a resolution adopted by the entire group unanimously at the same meeting and expresses the response of the Bowling Proprietors to Mr. Hanigan.

Now, one of the critical issues in this case is whether or not Brunswick may acquire bowling

[540]

centers for the purpose of repossessing and rehabilitating them. This is what Mr. Hanigan says he is going to do in the statement which is part of the exhibit.

The bowling proprietors express their concern that this is not true at all. To the contrary, they believe that this is injurious, and that Brunswick ought not to acquire it, and indeed, we are going to show that Brunswick never in good faith went through with repossession and selling. The plan Hanigan announces is, "We will take the machines back or the centers and we will rehabilitate them, and sell them off."

We propose to show that only two out of 260 were sold off.

I'd like to point out also that this position of mine will be supported by witnesses, Mr. Lieblich, Mr. Dankoff, who proposed the resolution, will take the stand, the president of the Bowling Proprietors Association will take the stand, and there isn't any question that this is an accurate reproduction of the resolution which was passed, and Judge Wortendyke when confronted by the same problem let it in on the basis of the need to show intent with respect to Brunswick's acquisitions.

[541]

The Court: Let the record reveal that the pertinent part of this resolution that has been referred to by counsel for plaintiffs reads as follows:

"Resolved, that we, the members of the Bowling Proprietors Association of America, hereby express our grave concern that the incursion of the Brunswick Corporation into the area of operation of bowling centers in direct competition with members or non-members of this Association is not in the public interest and is injurious to competition based upon its pre-eminent position as a manufacturer and supplier, major creditor and financier in the bowling field."

My offhand analysis of this is, Number 1, this isn't a class action.

Number 2, what is the relevancy of the concern of the members or non-members of this association as far as this case is concerned?

Mr. Hoffmann: Your Honor, the relevancy is that Mr. Hanigan on several occasions, this time and later as well, thought it necessary to reassure the bowling proprietors that what he was doing when

he was acquiring the centers was to simply acquire them for rehabilitative purposes.

[542]

Now, if that's so, then the issue would be much more different in respect to monopoly. We are going to show that the bowling proprietors from the first spotted this as false, and he had to reassure them because they had spotted it as false, and that the course of conduct of Brunswick later on indicated it was false, and indeed, they acquired centers for the purpose of operating them.

The Court: I will sustain the motion at this time without prejudice later on, I might let it in, but not as far as this witness is concerned and the testimony of Mr. Lieblich.

If someone else is going to appear and testify as to this, the resolution, I may permit it at that time.

It will be removed. You are not going to pass it on to the jury now anyway.

Mr. Hoffmann: No.

The Court: I will sustain your objection at this time, Mr. Seeley.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

By Mr. Hoffmann:

Q. Mr. Lieblich, can you without reading from

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Plaintiff's 27, tell us what you understood Mr. Hanigan to be saying to you and the other proprietors at the meeting in San Juan?

Mr. Seeley: I object to that. The document is here——

The Court: I will permit him to testify as to his recollection, I won't permit him to summarize it.

What is your recollection?

The Witness: I remember there were 14 points, because they were famously known thereafter as Mr. Hanigan's Fourteen Points.

The upshot of it was that Brunswick was taking over the centers as salvage operation, that the proprietors should have nothing to be concerned about with Brunswick expanding their operating activities, as salvage. Brunswick would try to get them on their feet, and sell them off, and that the proprietors shouldn't be alarmed at what was happening.

And then he cited the guidelines that his attorneys had given as to how the centers should be operated under Brunswick's ownership.

[544]

Q. Mr. Lieblich, would you be good enough to address your attention to the third page of the exhibit?

A. Yes.

Q. Is this your point of reference, where Mr. Hanigan is reading the "Legal Guidelines" for the bowling establishments to be operated by the Brunswick Corporation?

A. Yes, these are the 14 points.

Q. I want to address your attention to certain of these points. Would you look, please, at point four?

A. Yes.

Q. "Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in

each case that the location could support such establishment without imperiling the business of any existing establishment in the area, and that no other person or entity is available which is ready, able and willing to open an establishment in such location."

Can you tell, of your own knowledge, whether or not this fourth point was followed by the Brunswick Company in practice?

[545]

A. I know they opened up quite a few brand new centers since this meeting at San Juan.

Q. And in the fourth point it was, "It shouldn't consider opening any bowling establishment for the purpose of placing in them repossessed pinsetters and alleys, unless determined" and so forth, "and that no other person or entity is available which is ready, willing and able to open an establishment."

In respect of that matter of no other person or entity being available, do you have any knowledge of situations in which such persons were available for the establishment——

A. Yes.

Q. What is the first one that comes to your mind?

A. In Fort Wayne, Indiana, where Brunswick opened up two or three years ago a brand new bowling center, there was an existing prorietor in that area that was desirous of acquiring the Brunswick center.

Q. And any other examples that come to mind?

The Court: What about the first part of item 4? Do you—you have it in front of you there?

The Witness: Yes.

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The Court: Point 4, will you enlighten the jury on that? You discussed the second part, about the availability of new entrepreneurs. What about the first part?

The Witness: I know they have opened several—I would say about eight or ten, that I can think of.

The Court: For the purpose of placing in them, repossessed pinsetters and alleys?

The Witness: Yes, sir; some. Some had new equipment, but others were repossessed equipment, as I understand. But I am not sure if they were repossessed, or were rebuilt, or brand new.

Q. Now, Mr. Lieblich, would you be good enough to look at the fifth item. "Brunswick Corporation should not acquire any existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys, unless it should appear that such establishment had become a failing business and that the operator had requested Brunswick to take it over."

Can you tell us, from your own knowledge, whether or not this legal guide has been followed by Brunswick?

A. I don't believe so.

[547]

Mr. Seeley: I object to his belief.

The Court: That will be stricken and the jury will be instructed to ignore it.

Do you know or don't you know?

The Witness: No.

The Court: You do not know.

The Witness: No, sir; I mean the answer is—I am answering the question as "no."

Mr. Hoffmann: May we go back, with your permission?

The question was: Could he tell us, of his own knowledge, whether or not the guide had been followed?

The Court: "I don't believe so." I don't think that answer is responsive.

The Witness: Then I would say yes.

Q. You do know; is that your answer?
A. Yes.
Q. Will you tell us about that?
A. Well, they certainly didn't ask our permission to take over our Fort Lauderdale Bowl-O-Mat. They took over Dutchess Lanes from Mrs. Ethel Levine, against her specific wishes. I recall seeing in the Brunswick files that you gave me correspondence from Mrs. Levine to the chairman of the board of

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Brunswick, asking their continued cooperation and understanding, in view of her husband's long association with the Brunswick Corporation.

Q. Can you think of any others at the moment?

A. Yes. When they acquired Fair Lawn Lanes and Interstate Lanes at a bankruptcy sale. Those were very successful business operations. They were making a good deal of money at that time. Their parent company was in bankruptcy, but both Fair Lawn and Interstate Lanes were profitable centers. They were not losing centers at the time of the acquisition by Brunswick.

Q. You mentioned the bankruptcy sale. What was the organization involved in that sale?

A. American International Bowling Corporation.

Q. Do you know what that corporation did prior to the bankruptcy?

A. Yes, it was the largest operator of bowling centers in the country at that time.

Q. What time are you referring to?

A. Through 1965. In the early part of 1965 a petition in bankruptcy was filed right here in Newark for that company, since it was a New Jersey corporation which had its principal office in Englewood, I believe--yes, it was in Englewood.

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Q. And do you know about how many centers they operated?

A. There were about 34 that were then being operated by American International Bowling Corporation.

Q. Do you know what the purpose of the sale was?

A. Yes.

Q. What was that, sir?

A. The Referee in Bankruptcy in Newark--or, rather, the Receiver--had advertised in newspapers, and wherever else legal notices should be published, that there would be a sale here in the Courthouse in Newark of all of the assets of the different companies owned by American International Bowling Corporation. The purpose——

Q. Then did you have--or operate any centers near the centers owned and operated by AIBC, or the American International Bowling Corporation?

A. Yes.

Q. What was that, sir?

A. Well, our center in Paramus, New Jersey, was fairly close to two of the centers that were then being

operated by American International Bowling Corporation. They had a center in Fair Lawn, New Jersey, and they had one in Ramsey, New Jersey, referred to as

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Interstate Lanes.

Q. And did you have any interest in acquiring the centers that were near yours?

A. Yes.

Q. How did you express it?

A. When we received the notice of the sale, I received from the Bankruptcy Court, or the attorney for the Receiver, the profit and loss statements of several of the centers, specifically, Fair Lawn and Interstate in Ramsey, and there was an additional one in Pennsylvania in which we had expressed an interest. And I had various discussions with our board of directors, and several of the chains, about coming to the Bankruptcy Court in Newark to bid for some of the centers that were to be offered for sale.

There were two other individuals who had expressed an interest in buying some of the other centers, and the three of us had intended to come to court and make an offer, some of us, to buy the centers.

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Q. Did you do that?

A. No, sir; at the last moment our Board of Directors met with me and we concluded that we should not come to court to make a bid for other Fair Lawn or Interstate Lanes in Ramsey, or the property in Pennsylvania.

Q. Did you learn what happened to the AIBC centers?

A. Yes.

Q. What was that?

A. At the time of the sale here at the courthouse in Newark there was very active bidding for many of the centers that were offered for sale. Brunswick, who was the high bidder on 31 of the 32—if my memory is right in there being 32—there was one, a center out on the Island, that a Chris Vitolo outbid the Brunswick offer. And he left that day being the owner of that center.

Brunswick purchased against the competitive bidding among individuals all the other centers that day.

Q. I ask you, sir, to look at Plaintiff's Exhibit 27 in evidence again. Do you notice Mr. Hanigan's statement on the very last page, the next to the last line, in the first column, starts—

A. Excuse me, sir. Next to the last—

Q. The next to the last line on the first

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column starts, " I know that some people are very suspicious of our motives in setting up retail establishments. People are afraid that we are trying to dominate the bowling business. To give you some idea of how ungrounded these fears are, we figured out that the investment you have in bowling establishments, exclusive of buildings and land, is $4,400,000,000."

Did that statement of Mr. Hanigan reassure you in any way that Brunswick was not setting up retail establishments in order to dominate the bowling business?

Mr. Seeley: I object.

The Court: Why? He, himself. Why is that objectionable? I am going to permit that.

Answer the question.

A. Yes.

The Court: The answer is yes.

Q. You were reassured by the statement?

A. Yes.

Q. Was this statement made prior to the AIBC sale, do you know?

A. No, it was made a month or two after the sale.

Q. And you had knowledge of the AIBC sale at the time?

A. Yes.

Q. Nonetheless, you were reassured by the remarks

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of Mr. Hanigan?

A. Oh, I didn't understand your question. I thought Mr. Hanigan was trying to reassure us. But my own conclusion was quite to the contrary. I didn't believe him.

Q. And what was the reason for not believing him, if you can remember?

A. Yes. Some of the activities that I had already experienced with the Brunswick Corporation at that point—I just didn't believe what they were saying.

Mr. Seeley: I object to that, your Honor, because it's general. There is no way to know what facts he is talking about.

The Court: Will you read that answer again, please.

(Record read.)

The Court: No, I will let it remain.

Q. In view of Mr. Seeley's comment, Mr. Lieblich, would you care to relate some of those activities which caused you to disbelieve Mr. Hanigan?

A. Yes. I think primarily, in our dealing with the very highest executives of Brunswick—it was in the sum-

mer of 1964 when we had given a parent guarantee on all of the obligations of our subsidiaries on Mr. Hanigan's assurance that all people would be dealt with very

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strictly, and on the same basis. I learned in the next few months that this was not so.

I recall—well, I wrote to Brunswick in February of 1965, as an example, which was some months before Mr. Hanigan's statement in San Juan, when I learned that the people in Puerto Rico that owned Star Bowl weren't paying—and I wrote to Brunswick and said I had been assured that their policy was to enforce all contracts fairly.

And I got a reply which didn't, to me, measure up with the facts.

And then about two weeks after that exchange of correspondence I was reading the annual report of a public company in the bowling business called Great Lakes Bowling. This company is on the American Stock Exchange, as is our company. Its president is Mr. John Brown. And while I read the report of Mr. Brown's company for the year that just ended, my eye caught a footnote in his annual report which reflected the arrangement that he had worked out with his company on the Brunswick debt. And he was paying only 6 per cent interest and we had been asked to pay 9 per cent interest.

So I wrote to Mr. Cahill, a director of the company, and in my letter I extracted the footnote in the Great Lakes report, and I asked him, "How come?" This

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didn't measure-up to what they had promised us in June of 1964 would be the case.

After some interoffice correspondence in the Brunswick organization, which you showed me, Mr. Hoffmann,

after you subpoenaed their records, I had a reply from Mr. Cahill which said that the arrangements that had been effected with Mr. Brown, although consummated later than ours, were actually completed prior to my discussions with Brunswick. And that wasn't true.

So it is things like this, and from the other activities that occurred in earlier years, that led me to believe that no matter what Mr. Hanigan said in Puerto Rico, I just didn't believe him.

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Q. Well, as a matter of fact, did you have occasion to learn how many bowling centers were acquired by Brunswick subsequent to the June 1965 Puerto Rico meeting of the BPAA?

A. Yes.

Q. How many was that?

A. Well, in all, there were approximately 260 bowling centers that Brunswick repossessed and operated itself.

Now, at San Juan, I think Mr. Hanigan said there were about 76.

The Court: How many were there?

The Witness: 259, 260.

I think at San Juan there were about 70 that they then operated, so between San Juan and right now they took over an additional 180 centers.

Q. Mr. Hanigan said at San Juan that he'd rehabilitate the centers and then try to sell them off; is that right?

A. Yes.

Q. Do you know how many such centers were sold by Brunswick?

A. Very, very few.

Q. Do you have any information as to the amount?

A. Yes.

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Q. What is that, sir?

A. At the last time that I heard Mr. Rudo testify or under examination, I think he said, this was about 1970, that two had been sold between 1965 and 1970.

From 1970 to date, I don't know if any of the BPOD centers that have been sold. There may be one or two, but I don't know of any that were sold.

Q. Finally, going back again to plaintiff's 27, would you look on the second page, please, near the bottom of the first column:

> "We have decided in these cases that the right answer is repossession. And the reason for this is that we think it is unfair to other bowling proprietors who are paying us or our competitors to give some people a free ride."

Sir, do you know of any instances in which Brunswick gave free rides to your competitors?

A. Oh, yes.

Q. Just briefly, who were they?

A. In Puerto Rico—pardon me—in Pueblo, Colorado, our competitor, Belmont Lanes, had a free ride for three years. They paid a total of $2,300 in three years.

Our competitor in Puerto Rico, Star Bowl, re-

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ceived numerous concessions, and certainly wasn't called upon to make that.

In Fort Lauderdale, while it was still our operation, our competitor, Imperial Bowl, paid very, very, very little, if anything, to Brunswick during their operating years.

Q. Mr. Lieblich, did you have occasion to attend the meeting of the Bowling Proprietors Association of America in San Diego, California?

A. Yes.

Q. Do you remember when that meeting took place?

A. Yes, sir, that was a year after the San Juan meeting, that was in June 1966.

(Exhibit P-28 marked for identification.)

Q. I show you a pamphlet that's been marked P-28 for identification, bearing on the cover page the legend, "Let's Talk Facts."

Can you tell us what that is?

A. Yes. At the Proprietors' Convention—at the Proprietors' Convention, just before the Brunswick people made its presentation during the period of time allotted to it, there was distributed to all of the members this pamphlet from the Brunswick Corporation, which was entitled, "Let's Talk Facts."

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Mr. Hoffmann: I offer 28 in evidence.

Mr. Seeley: I have no objection.

The Court: Into evidence.

(Exhibit P-28 received and marked in evidence.)

Mr. Hoffmann: Your Honor, may I pass these three copies? It is a rather bulky thing. We didn't make enough copies.

The Court: Yes.

Mr. Hoffmann: Would you be kind enough to pass these about?

Q. Would you be good enough to address yourself to the first page, that is to say, the first page after the statement about the—there is an old fable about four blind men who were examining, and of course, it is an elephant that

they were examining, is it not? There is some confusion among the blind men if I may make the statement for the record, as to what the elephant was.

There is no confusion as to what this is, is there, Mr. Lieblich; is this a statement of Brunswick's policy?

A. It was given to us by Brunswick.

Q. And if you look at page number five, do you see the sentence, "Brunswick's policies that are

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the subject of this report, were developed after two years of careful top management consideration"?

The Court: What page are you on?

Mr. Hoffmann: On page 5.

The Court: Oh, yes.

Q. Second paragraph, Mr. Lieblich. You see that?

A. Yes.

Q. Was this circulated to you from Brunswick people at this meeting?

A. It was handed to each of the proprietors who were in attendance at the meeting. I was in attendance, and I received my copy.

Q. When you go on in it, you notice the heading on the next page—by the way, it says it will take just 15 minutes to read the entire report, but your Honor, I trust I won't read it all and we will go through it quickly.

The Court: I trust, also.

Q. You notice on the next page, 6, the heading in bold caps, "Brunswick is Protecting your Investment in the Bowling Industry".

What did you understand that to mean; what understanding did that heading give to you, if any?

A. Brunswick was going to take care of proprietors,

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and would protect the investment that each of us made in our companies.

Q. Now, these various headings, did that seem to be keyed in your mind to that broad statement that Brunswick is protecting your investment? The headings I refer to on that page are, one, a firm price policy; two, a firm down payment policy.

Do you see that?

A. Yes.

Q. Were these in your mind examples of Brunswick's protecting your investment?

A. Yes.

Q. Now, then, turn the page, please, to page 7, where you have a reference to 30 percent or more.

Do you see that heading under "Down Payment Plan"?

A. Yes.

Q. "A down payment in excess of 30 percent would create a healthier competitive climate for the bowling industry for it affords the proprietor maximum opportunity for success."

Was this requirement for a down payment of 30 percent, Mr. Lieblich, something new as of the year of that meeting, 1966?

A. Yes, I believe so.

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Q. Do you know what it had been in the past?

A. Well, considerably less, on the pinsetters, the proprietors paid $500 down against an $8100 purchase. That's about 26 percent.

May I make some marks on this?

Q. Sure, if you want to.

The Court: What happened to your computer?

Mr. Hoffmann: Off the record.

(Discussion off the record.)

A. Yes, that was less than 10 percent down, and on the lanes, the investment varied, we generally paid 20 percent down, but other proprietors, other contracts that I have looked at, had as little as 10 percent down on the lanes.

So this requirement of 30 percent or more was a much more significant down payment than the industry had seen before.

Q. In your opinion, did down payments of this higher amount in some way contribute to more healthy competitive conditions in the industry?

A. Well, had this 30 percent requirement been in effect in 1959, 1960, 1961, there would have been much fewer centers opened up.

In that sense it would have—there would have been less competition.

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Q. Can you explain that a little more?

A. Yes. The reason that many proprietors came into the business was because they couldn't get in with so little money. If you only paid 10 percent down, it is a lot easier than if you had to pay 30 percent, they were dealing with a lot of money for the opening of a new center. So the difference between 10 percent and 30 percent is a lot of money if you multiply by 500,000.

Q. Now, do you have any knowledge of whether or not the new standard, 30 percent, was carried out by Brunswick in practice?

A. No, I do not.

Q. Mr. Lieblich, would you be good enough to turn to page 11?

You see the first sentence—rather, the caps:

"As a matter of fact, Brunswick has found it necessary to operate bowling centers."

This didn't come as news in 1966; did it?

A. Sir, I don't know from where you are reading.

Q. Look at the bold caps in the margin.

The Court: Page 11.

A. Yes, I'm sorry.

Q. "As a matter of fact, Brunswick has found

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it necessary to operate bowling centers."

This was not news in San Diego, was it?

A. No, we were all aware of it.

Q. And at the top line on 11:

"Bowling centers fail because they are undercapitalized or suffer from inadequate management or because the present demand for bowling just does not justify their existence."

Do you know of any other reason, not given here, why bowling centers fail?

A. Well, overbuilding in the area, too many bowling centers having been installed.

Q. Now, in 1966, what was your opinion concerning the matter of overbuilding; did you have any opinion as to what the industry was like in 1966?

A. Oh, yes.

Q. What was that?

A. It was one of the worst years that the bowling industry had ever seen.

Q. And does that correlate in your opinion some way with the existence of overbuilding?

A. Well, it goes to prove my own judgment that there were too many bowling centers in business.

Q. Now, would you be good enough to take a look at page 9, the first sentence. The previous page

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contains bold caps, does it not: "As a matter of fact, Brunswick is enforcing conditions of sale," and then the first sentence on page 9 is, "Simply stated, this means that we expect to be paid on time for equipment and supplies that we sell."

What is your experience concerning whether or not that happened after San Diego?

A. I don't—our competitor in Puerto Rico, Star Bowl, I believe was still not paying Brunswick in 1966, or if it were paying, they were paying in very small amounts.

Q. Now, sir, would you be good enough to go to page 14.

Do you see the sentence: "As a matter of fact—" this is again in the margin—"BCO centers are offered for sale"?

A. Yes, I see that.

Q. Did you ever make any attempt to purchase any such centers?

A. On two occasions I communicated with Mr. Rudo of the Brunswick Corporation about our buying Fair Lawn Lanes in Fair Lawn, New Jersey.

Q. And what reply did you receive?

A. They weren't interested, or it wasn't timely, or they'd get in touch with us, but I never heard from Mr.

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Rudo after the second communication I sent to him.

Q. And once again, you had occasion to learn how many centers, in fact, were sold by Brunswick?

A. Yes.

Q. And again that number?

A. I believe Mr. Rudo said at the last examination they had sold two of the BCOD centers between 1965 and 1970.

Q. Now, Mr. Lieblich, did there come a time when you attended a convention of the BPAA in New York?

A. Yes.

Q. When did that happen?

A. I believe the convention at the New York Hilton was a year after the San Diego convention.

I think that was in June of 1967.

The Court: Are you finished with P-28 for the time being?

Mr. Hoffmann: Yes.

The Court: Take them back from the jury, please.

Mr. Hoffmann: I'd like to have marked as P-29 for identification a pamphlet bearing the legend, "The Name of the Game is How to Make Money, Brunswick Corporation Bowling

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Division, BPAA Convention, New York, June 16, 1967,"

(Exhibit P-29 marked for identification.)

Mr. Hoffmann: I think without ado I will offer P-29 into evidence.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-29 received and marked in evidence.)

Q. Would you be good enough, Mr. Lieblich, to look at page 3 of plaintiff's 29 in evidence.

Do you see this sentence, "Although Brunswick—" this is the first column, page 3—"although Brunswick has been the number one name in the industry for more than 65 years, we have never really participated as an operator until 1965."

Now, following that, is a reference to a self-sustaining situation. Do you see that?

A. Yes.

Q. "Now Brunswick is operating bowling centers, and through this experience gathering a considerable amount of information; consequently, we can also share your point of view;" and so on.

Then, "many of our centers which were

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formerly hopelessly delinquent to our Credit Department are now self-sustaining. These centers are offered for resale to independent businessmen where equity is available."

Once more, Mr. Lieblich, do you know of any other than the two referred to in your testimony of these Brunswick centers being sold to independent businessmen?

A. No, I do not.

Q. Now, do you have any knowledge concerning the other part of this sentence which I just read to you? This is at the time of the meeting in New York of June 16, 1967, the statement is made:

"Many of our centers which were formerly hopelessly delinquent to our Credit Department are now self-sustained"?

Do you have any knowledge of the truth or falsity of that statement?

A. Yes, I do.

Q. And what is that, sir?

A. I don't think the statement is entirely correct.

Q. In what way is it false or incorrect?

A. Well, by the time of this convention in New York when this—

The Court: Just a minute. Short recess.

(Short recess.)

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(After recess.)

The Court: Yes, Mr. Hoffmann.

By Mr. Hoffmann:

Q. Mr. Lieblich, you testified earlier that Brunswick opened centers of its own, is that correct?

A. Yes.

Q. Do you mean by that centers which it had constructed itself?

A. Yes, new ones.

Q. Have you seen any of those new centers?

A. Yes.

Q. Which ones?

A. Well, I have seen two of them.

Q. Where are those?

A. One in Fort Wayne, Indiana, and one just outside of Chicago. I think it is G-l-e-n-i-l-e. I forget how to spell it. It is outside of Chicago.

Q. Is that in Chicago Heights?

A. Yes, Chicago Heights.

Q. Can you describe the Chicago Heights center for us?

A. Yes. I think it had 24 lanes. It was a brand new, beautiful Brunswick center. It was just as nice as any of ours. It was fully carpeted. It had a very attractive snack bar, had a very nice cocktail lounge. It had all

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the latest Brunswick equipment in it. They had their speeded up mac es, their A-2 machines.

Q. When you say speeded up, A-2's, what do you mean by that?

A. As I said earlier, at about some point in 1963 Brunswick introduced an improved pinsetter, one that brought the ball back faster to the bowler. And they referred to that as their A-2 machine. And the installation in Chicago Heights had that new machine.

It also had their most advanced masking units. A masking unit is an area that covers the automatic pinsetter.

Now, I don't recall if the one in Chicago Heights had the new automatic scoring equipment. I know the one in——

Q. Is your memory depleted as to that; do you have any recollection one way or the other?

A. I know the one in Fort Wayne had the new automatic scoring equipment.

Q. Addressing yourself to Chicago Heights.

A. I think it did. I think it did.

Q. What is automatic scoring?

A. Well, it is something brand new that Brunswick has introduced. It is a machine, an electronic machine, which totals the bowler's score automatically. Instead of

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having the bowler, or the bowlers keep the record of their score, as they bowl each frame, this machine automatically flashes the total.

Q. Is it something like a computer?

A. Well, it has to be based on the computer concept. It is a very expensive piece of equipment.

Q. How much does it cost?

A. We don't have any. I have never bought any, but the price was quoted to me. I think it is almost $2,000 per lane, or maybe as much as $3,000 per lane. So on a 40-lane installation that would cost $120,000 to put it in.

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Q. If a center is equipped with automatic scoring, then, that $120,000 would be in addition to what is paid for the lanes and for the automatic pinsetting equipment, is that right?

A. Yes, it is something separate and apart from the lanes and pinsetters. It is just an additional piece of bowling equipment.

Q. What does it do, is it something that interests the bowler, do you think?

A. Yes, that is the sales effort that Brunswick makes: If you have this equipment, it will bring more bowlers into your place. It will enable you to take bowlers from another center into your place, because you now have the most up to date advanced equipment that there is.

Q. Does it replace the pad and pencil in keeping score?

A. Yes.

Q. And errors in arithmetic seem unlikely, is that right?

A. If it is free of computer bugs, yes.

Mr. Hoffmann: Miss Costello, will you please mark as Plaintiff's Exhibit 30 for identification an eight-page, triple spaced document entitled "A discussion of Brunswick Corporation" by John L. Hanigan, president and chief executive officer,

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before the New York Society of Security Analysts, with a date for release: After 2:00 p.m., Friday, June 6, 1969.

(Exhibit P-30 marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you Plaintiff's Exhibit 30 for identification and ask you if you have ever seen that before?

A. Yes.

Q. How did it first come to your attention?

A. A stock broker had attended a meeting in New York, before the New York Society of Security Analysts, where Mr. Hanigan, the president of Brunswick Corporation, addressed the New York Society. And he sent me a copy of the pamphlet that was handed out by Mr. Hanigan—or by Mr. Hanigan's staff—at the time of the presentation to the New York Society of Security Analysts.

Q. Do you know whether or not Mr. Hanigan delivered the remarks as reported here before the society?

A. Yes, he did.

Mr. Hoffmann: I will ask that it be admitted, if I may, as Plaintiff's Exhibit 30.

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-30 received and marked in evidence.)

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Q. Mr. Lieblich, would you turn, please, to the bottom of page 4—the top of page 5 of these remarks. Do you see the three sentences there? I will read them to you.

"In the recreation field we have also been operating 170 bowling houses that we have had to repossess. Up until now these have contributed significant cash flow but book losses. This year they will be in the black. We have learned a lot about operating cash businesses and think that our technique can be applied to other fields in the future. We found the bowling business at retail is a good business and I am happy to say that this part of our operation, which was necessary as salvage, looks to be profitable for the future, whether we operate them or sell them as going businesses."

Now, sir, what did you understand Mr. Hanigan to mean by the last sentence, that is to say, "The business looks to be profitable for the future whether we operate them or sell them as going businesses"?

A. That they are going to make money from the operation of BCO, if they sold them or if they continued to operate them themselves.

Q. Have you had occasion to find out whether or not the remarks made by Mr. Hanigan here are correct? Let's take a look at them. He says, "We have been oper-

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ating 170 bowling houses that we had to repossess."

That's in 1969, June. Do you know whether that is correct or not?

A. I think the total was more than 170. If I could add it up, I think it was more than 170. I am sure it was.

Q. Where do you find the information as to the total?

A. Well, sir, after this case was started, you subpoenaed the Brunswick records, and they delivered to you, and then you gave to me, profit and loss statements on all of the houses being operated by BCOD from 1965. And each year you received from Brunswick the records for every subsequent year and you have given me all of those records that I might analyze each one.

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Q. Those are records coming from Brunswick itself, are they not?

A. Yes, sir.

Q. Now, the second sentence, "Up until now these have contributed"—referring to the 170 bowling houses—"these have contributed significant cash flow but book losses."

Do you know what the Brunswick records show as to that?

A. Yes.

Q. And what is that?

A. In 1965 all of the BCOD centers that were operated by Brunswick lost $2,171,000. And they had a cash loss that year of $2,681,000.

In the year 1966 the BCOD houses had a loss of $1,136,000, and they had a positive cash flow of $986,000.

In 1967 all of the BCO houses——

Excuse me. May I change my answer, please, Mr. Hoffmann? I was looking on the sheet of another set of figures.

In 1965 the total loss of the BCOD centers was $2,298,000 and the cash loss was $2,872,000.

In 1966 the loss of all the BCO centers was $1,409,000. There was a positive cash flow of $856,000.

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In 1967 all the BCO centers lost $1,406,000. Their cash flow was $1,295,000.

In 1968 the loss of all the BCO centers was $861,000. And their cash flow was positive, $1,924,000.

Mr. Hanigan's remarks were in June of 1969. So at that point there was a cumulative loss from these operations of $5,800,000. And from a cash standpoint they produced cash of about $1,100,000. It was in that context that he made this——

Q. Now, sir, what have you been reading from?

A. I am reading from a chart that I prepared, with the help of our accounting department, entitled "BCOD consolidated summaries." This was prepared from the sheets furnished us by Brunswick Corporation, under your subpoena.

Mr. Hoffmann: I am asking Miss Costello to mark as Plaintiff's Exhibit 31 for identification a spread sheet entitled "BCOD consolidated summaries" containing entries for each of the years 1965 through 1972, ending with a line purporting to show cash flow.

(Exhibit P-31 marked for identification.)

Q. Mr. Lieblich, I show you Plaintiff's Exhibit 31 for identification and ask whether that is the document about which you have just been testifying.

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A. Yes, sir; it is.

Q. And were these summaries, summaries of information furnished by Brunswick to us?

A. Yes, sir.

Q. Is that your testimony?

A. Yes, sir.

Q. Do they in any way depart from the information, to your knowledge?

A. No, sir; I am holding in my hand the summaries that we received from Brunswick for their consolidated operations each year.

Mr. Hoffmann: I offer Plaintiff's Exhibit 31 in evidence.

The Court: Any objection?

Mr. Seeley: I would like to ask one question, your Honor.

The Court: What is it?

EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Is this limited to domestic bowling subsidiaries of BCO or does it include some of its foreign operations, as well?

A. Just Canadian.

Q. Just Canadian?

A. American and Canadian. It is from the summary sheets,

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Mr. Seeley.

Mr. Seeley: I object to it on the ground of its including the Canadian, which is not involved in this case at all.

The Court: Why should I permit any statistical information pertaining to the Dominion of Canada?

Mr. Hoffmann: Your Honor, I don't press the exhibit because of the fact, in anticipation of a possible objection, I also have a document which I would like to have marked as P-32 for identification, which eliminates Canada.

The Court: American.

Mr. Hoffmann: Confined only to the American centers.

(Exhibit P-32 marked for identification.)

The Court: May I ask why you offered P-31? Did you think Mr. Seeley was out of the room, or something?

Mr. Hoffmann: No, your Honor. We thought the difference was so miniscule, so small, as to not to make the separate calculation necessary. However, at the last moment, operating under the doctrine which is called an abundance of caution—the kind of doctrine which awakens me in the middle

[580]

of the night—we prepared the other.

The Court: I would call it legal sleight of hand.

Mr. Hoffmann: I want to point out to your Honor that—sleight of hand or not, with great respect—the difference between the two summaries are very small, indeed.

By Mr. Hoffmann:

Q. I show you Plaintiff's Exhibit 32 for identification and ask you if that is the summary prepared in the way you described, but eliminating the Canadian-operated centers?

A. Yes.

• • •

[582]

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, is it fair to say, from your testimony, that other than the elimination of the Canadian centers, plaintiff's Exhibit 32 corresponds with 31, in that you received the information from Brunswick, is that correct?

A. Yes, it comes from their consolidated statements for each year.

Mr. Hoffmann: I offer 32 in evidence.

Mr. Seeley: No objection.

The Court: Into evidence.

(P-32 received in evidence.)

Mr. Hoffmann: If I may, your Honor, I would like to circulate P-32 amongst the jurors.

The Court: All right.

(Documents handed to the jurors.)

Q. Mr. Lieblich, what does this "Domestic Operations Only Summary" purport to show, what is it designed to show?

[583]

A. A number of centers that Brunswick operated at the end of each year, the number of lanes that were operated by them during that year, the number of tenpin lanes that are included in the figure above, the profit or loss of the total of all the BCOD houses for the year, the depreciation that was reflected on the Brunswick books that year, and then the cash flow.

Q. Now, sir, I note in the third entry, the number of tenpin lanes, that you use the phrase, "Tenpin Lanes." Are there any other kind of lanes on which people bowl?

A. Yes, there are a relatively small number of bowling centers throughout New England and Canada which have either candlepin lanes or duckpin lanes. New England was traditionally a center of duckpins, and candlepins. And despite the great inroads that have been made in New England and elsewhere with the larger pins, called the tenpins, there still persists some few houses which have all, or some, tenpin or candlepin lanes.

Q. Does the subtraction of candlepin lanes or duckpin lanes significantly affect any of the results in the consolidated operations of the Brunswick domestic centers?

A. No.

[584]

The Court: As a matter of curiosity, do automatic pinsetters take care of candlepins and also duckpins?

The Witness: There is a different type of machine, sir. It is an automatic machine. It is less expensive, less complicated than the tenpin machine.

The Court: All right.

[585]

Q. Now, if you go down the column for us again, take the first column, please.

After you have established these figures for lanes and number of centers, number of ten pin lanes—incidentally, does the third entry, the number of ten pin lanes, when subtracted from the number of lanes, give you the picture of how many candle pin or duck pin lanes are around?

A. Yes. As an example, in 1965, if you subtract 3,519 ten pin lanes from 3,629, that means that there were 110 either duck pin or candle pin lanes that Brunswick was operating in the domestic division.

Q. Now, would you be good enough to compare this with 1972?

A. In 1972 there were, where we have a total of 5,200 lanes in all, number of ten pin lanes, 5,110, so that means in 1972 there were only 90 duck pin or candle pin lanes operated by Brunswick.

Q. These are called duck pins?

A. Yes.

The Court: Does that have the rubber around it——

The Witness: I think so, sir.

Q. Would you go to the next line, profit and loss, please, after the number of ten pin lanes?

[586]

A. Yes.

Q. What is the meaning of the parenthesis, close parenthesis, with the word "loss" in it; is that the way the numbers are set forth?

A. Yes. If there is a loss in a year, that's with a parenthesis around it. If there is no parenthesis around it, it means there was a profit during that year.

Q. Now, does that line also mean that from Brunswick's own records, there is an indication of a loss running from 1965, 1966, 1967 and 1968?

A. Yes.

Q. What happened in 1965?

A. It made a profit.

Q. Coming to the bottom line, the cash flow, does that indicate a negative, the first entry in parenthesis in 1965, is that a negative entry?

A. Yes, cash loss, $2,681,000 during that first year.

Q. Could you describe to the jury what you mean by "cash loss"?

A. That was what was the difference between the money they took in and the money they had to pay out to make all of their expenses.

Q. Now, sir, on the next to the last line there is "depreciation."

A. Yes.

[587]

Q. What is the source of that information about depreciation?

A. Brunswick's records.

Q. Is that some calculation you made, depreciation?

A. No, it comes from their consolidated records.

Q. Did they call these numbers depreciation; is that their word?

A. Yes.

Q. Does it follow from what you have just said that when you find in 1965 an entry of $879,000 under depreciation, that's what Brunswick in its records said was depreciation; is that it?

A. Yes.

• • •

DIRECT EXAMINATION (Continued).

[591]

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, you testified that you observed some new construction of Brunswick; is that right?

A. Yes.

Q. Do you have any knowledge of the number of new installations which Brunswick made in recent years, that is to say, since 1965?

A. I know a good many of them, yes.

Q. Where is that?

A. There is one in Buffalo, New York; there is one I saw in Chicago Heights; there is one in Fort Wayne, Indiana; there is one in Louisville, Kentucky; there is one in Orange County, I believe, California; there is one in Houston, Texas.

That's all I can think of right now, Mr. Hoffmann. There may be others.

Q. Do you know whether or not Brunswick is operating these new centers itself?

A. Oh, yes, sir.

Q. Mr. Lieblich, did there come a time when the debts of Bowl-O-Mat were paid off to Brunswick?

A. Yes.

Q. About when did that happen?

A. January—well, beginning in October of 1965,

[592]

October 1965 we began to borrow money from banks around the country, and first we paid them in full for Muncie Bowl-O-Mat; then a month or two later we borrowed money from a bank in Detroit and we paid them in full for our Skor Lanes Bowl-O-Mat.

Then in January of 1966 we borrowed almost a million dollars from the Franklin National Bank in New York and the New Jersey Bank & Trust Company in Paterson, they did this together, and with that money all that was owed was the money due on Indianapolis.

In March or in April of 1966 we borrowed an additional $175,000 from a bank in Indianapolis, and with that

we paid in full every equipment obligation of all of our companies to Brunswick.

Q. By what date was the debt paid in full?

A. I believe in April of 1966. Might have been a month or so before then, but it was generally March or April of 1966.

The great bulk was given to them in January 1966.

Mr. Hoffmann: Your Honor, I have a document dated October 21, 1964. I have shown it to my adversary. He has kindly indicated that I need not give him a copy.

I think I have his consent to use the document. I unfortunately don't have copies, I am

[593]

wondering, since I see no need to pass them around to the jury, if I can have them marked and show them to you and to the witness.

The Court: Give me a short legend on each one.

Mr. Hoffmann: A communication, J. G. Thomas, and then above, Mr. K. P. Woelfel, and the subject is apparently Mr. Dan Lieblich, National Bowl-O-Mat, the date of communication October 21, 1964, and also on the face is an indication of Mr. John A. Seufert.

(Marked Exhibit P-33 for identification.)

[594]

Q. Mr. Lieblich, I show you plaintiffs' Exhibit 33 for identification and ask you if you can tell us what it is?

A. Yes, it is a document that you gave me, Mr. Hoffmann, after you had subpoenaed the Brunswick records. It is from Brunswick's interoffice correspondence.

Mr. Hoffmann: May I offer it in evidence as plaintiff's Exhibit 33.

Mr. Seeley: No objection.

The Court: In evidence.

(P-33 received in evidence.)

Q. Who is Mr. J. G. Thomas?

A. He is the gentleman sitting there in the rear row on the right-hand side.

Q. And in the year 1964, if you know, what position did he occupy for Brunswick?

A. I think his title then was Director of Sales for the Brunswick Bowling Division.

Q. Did you have any dealings with Mr. Thomas prior to October 21, 1964?

A. Oh, yes, over many years.

Q. I read you from the fourth paragraph of this, "Mr. Lieblich's chain, national Bowl-O-Mat, Inc., is one of the best we have, and his credit is excellent.

[595]

If we can help him solve this difficult problem in Florida, we should do so."

Do you know the problem in Florida to which that statement relates?

A. Yes. It was the sale of our Fort Lauderdale Bowl-O-Mat, or some other arrangement to handle that indebtedness I talked about yesterday.

Mr. Hoffmann: By the way, if I may say so, your Honor, on the one copy of plaintiff's 33, that you have in your hand, that is in evidence, there are some markings put there by counsel and I ask that they be disregarded, including the circling of the matter which I just read.

The Court: My only concern with the exhibit, even though your adversary has no objection to it, is that you will have to make some new copies of it and excise the parts that are marked off in red, because I dont' think it is fair to pinpoint them, in the event—

Mr. Hoffmann: I didn't realize at the time it was the sole copy we had. I'll be glad to do that in the morning, your Honor.

The Court: All right.

Mr. Hoffmann: There are no markings on

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plaintiff's Exhibit 34 for identification, which is a copy of a letter, William J. Blanks, National accounts manager of Brunswick Corporation, to Mr. Daniel P. Lieblich, under date of August 27, 1965.

(P-34 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 34 for identification and ask you if you can tell us whether you have seen this before?

A. Yes.

Q. And how did it come to you?

A. This is a letter that was sent to me on August 27 from Bill Blanks of the Brunswick Corporation.

Q. I notice that this is a copy and not an original. Is this a copy of the letter which came to you?

A. Yes.

Q. Would you look at it and make sure?

(Witness complies)

A. Yes.

Mr. Hoffmann: I offer plaintiff's Exhibit 34 into evidence.

Mr. Seeley: No objection.

The Court: Received in evidence.

(P-34 received in evidence.)

[597]

Q. I read to you the following sentence in the first paragraph of this letter. Perhaps I should stand next to you, so that you can see it yourself.

With your Honor's leave, may I do this?

The Court: Yes.

Q. (continuing) "I want you to be assured that corrective action has been instituted."

Do you know what that reference is to?

A. Yes, we had been having quite some difficulties with Brunswick in the Summer of 1965 in doing some resurfacing, they were quite late in doing resurfacing for us, there was some additional equipment we had bought for the Saginaw Bowl-O-Mat, and that was delayed. There were a good many difficulties and problems that had arisen and Bill Blanks, being their national accounts manager, was the person I had written to, or called on the telephone—called him at his home once—trying to straighten out some of these difficulties.

And that is what he meant by corrective action.

Q. The next sentence, "Whether you believe it or not, National Bowl-O-Mat Corporation is a very valued customer of the Brunswick Corporation, and we here, at the home office, are quite concerned when

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aggravations arise that cause you to be unhappy."

Do you have any specific subject to which that sentence I just read relates?

A. Well, Bill Blanks was always very cooperative in trying to help solve all of the problems that we had with Brunswick.

Q. Do you remember what his function was in the organization at the time?

A. Yes, his title was national accounts manager.

Q. And in that function, what dealings did you have with him?

A. Well, Bill was appointed by Mr. Rudo to handle the chains—I think that was his major function. And since our company had 10 or 11 operations, we were considered a chain operation. And we used to report and relate our problems to Bill Blanks. He was always very helpful to us.

Mr. Hoffmann: I ask that this be marked as plaintiff's Exhibit 35 for identification, a communication, J. G. Thomas to H. T. Chadwick, under date September 13, 1966.

(P-35 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 35 for identification and ask if you can tell us, sir, what it is?

[599]

A. Yes. This is another document that you gave me, Mr. Hoffmann, after you had subpoenaed the Brunswick records. And this is a Brunswick interoffice communication from Mr. Thomas—Jack Thomas—to Mr. Chadwick, with copies to various executives in the Brunswick organization.

Q. Mr. Lieblich, the date of this communication is September 13, 1966, is that right?

A. Yes, sir.

Q. And was this at a point in time, according to your testimony, after you had paid your debts to Brunswick?

A. This is six months after they had received payment in full of all the obligations of all of our subsidiaries on equipment obligations.

Q. Do you have any recollection when the complaint in this law suit was filed?

A. Yes, sir.

Q. When was that, sir?

A. It was filed in June of 1966.

Q. Prior to this communication?

A. Yes.

Q. Would you be good enough to read it aloud?

A. Yes, this is Mr. Thomas' memorandum to Mr. Chadwick, with copies to the various Brunswick executives.

[600]

> "This will confirm our phone conversation of Monday, September 12th in which I instructed you to inform Fair Lanes, Inc., of Baltimore, and National Bowl-O-Mat of Paterson, New Jersey, that all purchases effective Wednesday, September 14th, by these corporations from Brunswick, for supplies, equipment, service, et cetera, must be on a cash or a c.o.d. basis."

[601]

Q. Mr. Lieblich, if you know, who is, or what is Fair Lanes, Inc., of Baltimore?

A. Yes. Other than Brunswick, which operates almost 200 bowling centers, Fair Lanes is the largest and most profitable bowling center in the United States—bowling chain in the United States.

Its president is Mr. Sidney Friedberg, his father had organized the company probably 30 years ago, it had almost 40 bowling centers in operation, and since I received its annual reports every year I can say it has always been a very profitable company and is today the most profitable, and was in 1966, the most profitable of all of the bowling chains.

Q. Can you tell me, sir, whether or not Mr. Friedberg or Fair Lanes was engaged in litigation with Brunswick?

A. No—no.

Q. Mr. Lieblich, do you know of any reason why at the point of time when this letter was received you were put on a c.o.d. basis?

• • •

[604]

Q. Mr. Lieblich, had you at any time prior to this communication of September 13, 1966, been placed on a cash on delivery basis by Brunswick?

A. Never.

Q. And is what you say true of the days when your debts to Brunswick were at their highest?

A. We were always able to take a discount in paying our bills to Brunswick whenever our equipment bills permitted that.

Q. When you speak of a discount, to what do you refer; what kind of discount?

A. Over the years we had to buy parts for our machines from Brunswick, and those purchases permitted a discount if the bills were paid within a certain period of time, and our accounting department was always very careful to pay the bills as promptly as possible, to take the discount.

Q. Do you know about how much money Brunswick had received from Bowl-O-Mat in connection with the purchase of equipment prior to the receipt of this letter?

A. Yes. I think we paid them approximately $7 million over the years for equipment, resurfacing, parts, items for the machines, pro shop supplies we bought from them.

Q. What is involved in paying c.o.d.; what

[605]

physically happens when you are making payments on a cash on delivery basis?

A. Well, you must have cash available at the premises when a parts order from Brunswick would come in.

If the manager of one of our centers would order $2,000 worth of machine parts, he'd have to have that $2,000 sitting there in order to pay it to the truckman who brought the Brunswick equipment.

Mr. Hoffmann: I'd like to have marked as Plaintiff's 36 for identification what appears to be a copy of a memorandum, Arnold E. Taras, to Daniel Lieblich, September 13, 1966.

(Exhibit P-36 marked for identification.)

[606]

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's 36 for identification, and I ask you if you can tell us what that is?

A. Yes. Mr. Taras was at that time the director of our bowling division.

This was a memorandum he sent to me telling me that Mr. Chadwick of the Brunswick Corporation had called at the instruction of Mr. Jack Thomas to put us on a c.o.d. basis.

Q. Do you notice the last sentence in that memorandum?

A. Yes, I do.

Q. And what is that?

A. This is Mr. Taras saying, "I began questioning him in a general way why, and he said he didn't know, but that he was only following the instructions of his boss, Jack Thomas."

Mr. Hoffmann: I offer in evidence Plaintiff's Exhibit 36.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-36 received and marked in evidence.)

Mr. Hoffmann: I ask that a letter from Lieblich to Hanigan, president of Brunswick, under

[607]

date, September 14, 1966, be marked as Plaintiff's 37—it is a letter from Daniel Lieblich to Mr. Hanigan——

(Exhibit P-37 marked for identification.)

Mr. Hoffmann: Before questioning the witness about 37, your Honor, just as a matter of housekeeping, I now offer in evidence 35, to which counsel said there was no objection.

The Court: Into evidence.

Mr. Seeley: May we come to the side bar?

The Court: Yes, step up.

(Counsel approached side bar, and the following proceedings were had without the hearing of the jury:)

The Court: Which one are you referring to now?

Mr. Seeley: 37.

The Court: He hasn't offered it into evidence. He offered P-35.

Mr. Seeley: I'm sorry.

The Court: He neglected to offer P-35.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Exhibit P-35 received and marked in evidence.)

[608]

By Mr. Hoffmann:

Q. I show you a copy of Plaintiff's 37 for identification, and I ask you if you can tell us what it is.

A. Yes. This is a letter that I sent to Mr. Hanigan, the president of Brunswick Corporation, on September 14, after I received the memorandum from our director of operations, advising me that Mr. Thomas and Brunswick had put us on a c.o.d. basis.

Q. That memorandum that you refer to which you received was dated when?

A. September 13.

Q. That is, the day before?

A. Yes.

Q. Now, sir, do you have any recollection of receiving a reply to this letter of September 14, 1966?

A. Yes, I do.

Mr. Hoffmann: I ask that this document be marked as Plaintiff's 38 for identification. It is a copy of a letter, James F. Urbanik, president of the bowling division of Brunswick, to Mr. Daniel Lieblich, under date of September 23, 1966, and it states that it's been—that it is in response to Mr. Lieblich's letter of September 14 to Mr. Hanigan.

(Exhibit P-38 marked for identification.)

[609]

Q. Do you have before you P-38 for identification, the letter from Mr. Urbanik to you?

A. No, I do not.

Q. Is that letter in your hand, Plaintiff's 38 for identification, Urbanik to you, of September 23, 1966, is that the reply to which you just referred?

A. Yes, it is.

Q. Now, sir, coming back to P-37, that is to say, your letter to Hanigan of September 14, without reading it into evidence at all, what is the sense of it; what were you saying?

Mr. Seeley: I object. It's not been received in evidence so far as I know.

Mr. Hoffmann: Your Honor, I'm trying to make a proffer of the receipt of both of these exhibits. I want to show that these were interlaced one to the other, it was a normal business communication in the conduct of the business of both companies, and the internal substance has some bearing on that, it seems to me, in the sense that Mr. Lieblich says what he was doing and the other letter is responsive to it.

But be that as it may, I am quite prepared to offer them both at this time on the ground that I think they have been properly authenticated and

[610]

made ready as exhibits.

Mr. Seeley: No objection to P-38.

• • •

[617]

The Court: P-37 and P-38 into evidence. The third paragraph of the letter dated September 14, 1966, will be deleted.

(Exhibits P-37 and P-38 received into evidence.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I address your attention to P-37, your letter to Mr. Hanigan, to the fourth paragraph, which I read to you, "Since the filing of our Complaint in June our subsidiaries have continued to purchase machine parts and supplies from your company and I know of no instance where there has been any unreasonable delay in the payment of any invoice by any one of our subsidiaries."

Was any instance of such unreasonable delay pointed out to you by Brunswick at or about that time?

A. No, sir.

Q. I now ask you to look, please, at P-38, which is Mr. Urbanek, president of the Bowling Division, his letter to you under date of September 23, 1966.

A. Yes.

Q. Addressing yourself, if you will, to the listing of open accounts of National's subsidiaries, do you see that on the first page?

[618]

A. Yes, I do.

Q. "I am further advised that with respect to open accounts of National subsidiaries that $234.27 is past due from 1-30 days."

What were the normal credit terms, what was the practice with respect to your dealings with Brunswick?

A. 60 days would have been normal, unless there was a discount provided. Then we paid it promptly as possible to obtain the discount.

Q. Then the reference to the next item is $310.94 past due from 31-60 days. Anything unusual about that, sir?

A. No, sir. Very often there was a delay in getting invoices from Brunswick to our field operations, or then from the field operations to our home office, so they could be paid. So every once in a while, there was a little delay occasioned by the late receipt of an invoice. Sometimes we would get a statement from Brunswick in our Accounting Department, and would look for all the supporting invoices from the field operations.

Sometimes they wouldn't pay a bill until they have all the supporting documentation.

Q. Finally, there is an item of $8,267.24,

[619]

which is listed as past due over 60 days. Do you have any recollection of that item?

A. Yes, I do.

Q. Would you tell us about it?

A. Back in 1961, they had sent an order of bowling pins to Skor Lanes. They sent two bills for it, in other words, double billing. And for years and years we kept writing to tell them: Please disregard the second bill. Because we only got one shipment of pins, and it was paid for.

This is why the big balance was carried for so many years.

Mr. Seeley: If the Court please, I ask that the letter, Plaintiff's Exhibit 38, be read to the jury in its

entirety. I believe I have a right to ask that, since part of it has been read and the remainder is relevant in context to the part that was read.

Mr. Hoffmann: Your Honor, I have no objection. I would think that the more proper practice, with great respect to Mr. Seeley, would be that he read it himself at the time when he puts in his case. But I certainly have no objection to reading it now, if that is his desire.

The Court: Read it.

[620]

Mr. Hoffmann: All right.

The Court: Just tell the jury what it is.

Mr. Hoffmann: This is a letter which has been received in evidence as Plaintiff's 38. It is dated September 23, 1966. And it is from James F. Urbanek, who is the president of the Brunswick Bowling Division, and it is in response to the letter of September 14, about which Mr. Lieblich is testifying, which he wrote to Mr. Hanigan. And the letter reads as follows:

"Dear Dan:

"Your letter of September 14 to Mr. J. L. Hanigan, President, has been referred to me for reply.

"In our judgment, the difficulties of doing business with National and its subsidiaries do not warrant the extension of further credit to your companies. The payments which your companies have made to Brunswick over the past years have been the subject of recurrent haggling, negotiation, meetings, travel,

legal expenses, etc., all of which have resulted in excessive burdens and costs to Brunswick.

"Moreover, this state of affairs still continues. As recently as this summer, it was

[621]

necessary for us to place for legal action the collection of the monies due and owing Brunswick for some masking units at Saginaw Bowl-O-Mat, Saginaw, Michigan; an account which had been the subject of haggling by you for months and on which payments ought to have been made commencing November, 1965. I am further advised that with respect to open accounts of National subsidiaries"——

And this is the matter I questioned the witness about before——

"$234.27 is past due from 1-30 days

"$310.94 is past due from 31-60 days, and

"$8,267.24 is past due over 60 days.

"In short, Brunswick has had enough of these problems and simply cannot afford to attempt to do business with a customer on credit or on open account basis where the burden, expenses and difficulties of doing so suggest that it may not be worthwhile.

"I regret that you construe our policy as some sort of harassment by Brunswick. On the contrary, it seems to us simply that by minimizing the business contacts with your firm (by placing sales on a cash basis) Brunswick avoids

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the harassment and burden of attempting to do business with National on a credit basis.

"Yours truly, James F. Urbanek, President, Bowling Division."

[623]

Q. Now, Mr. Lieblich, I ask you, sir, do you know of any other bowling chains existing as of September 1966 that were current in their obligations to Brunswick?

A. I don't believe there was anyone that had paid Brunswick in full.

Q. Sir, in the past, prior to this letter, had you had any difficulties in getting short-term credit, such as 60 days, or 90 days, in handling your accounts with Brunswick?

A. Never?

Q. Did anybody from Brunswick, Mr. Urbanik, Mr. Hanigan, Mr. Thomas, or anybody else from Brunswick, sir, ever tell you that doing business with you involved so many problems that they simply couldn't afford to do business with you on a credit basis?

A. When Brunswick brought out its new A-2 machine, Bill Blanks came from Chicago and he said I was the first chain president they were going to contact about buying all their new A-2's. They were always calling us when there was any new Brunswick equipment on the market to see if we wouldn't buy it from them.

Q. Reference is made in the chart that Mr. Seeley insisted that I read to the following:

"In our judgment, the difficulties of doing business

[624]

with National and its subsidiaries do not warrant the extension of further credit to your companies."

Do you know what these difficulties of doing business are to which Mr. Urbanek refers?

A. Well, they had already made a profit of $3½ million on us.

Mr. Seeley: I move that be stricken, your Honor.

The Court: It will be stricken and the jury will be instructed to ignore it.

Q. Would you try to answer my question, please.

The Witness: Will you read the question? I thought I was responsive.

(Question read as follows:

"Question: Do you know what these difficulties of doing business are to which Mr. Urbanek refers?")

A. Yes, we had filed this lawsuit, antitrust lawsuit, against Brunswick.

Q. Do you know of anything else to which this reference might be made?

A. We paid them in full. We were still buying parts from them. We have to buy parts from them to keep our machines going.

Q. Look, please, at the next paragraph, "Moreover, this state of affairs still continues."

[625]

The Court: Referring to which exhibit?

Mr. Hoffmann: P-38, the third paragraph.

Q. (Continuing.) It starts, "Moreover, this state of affairs still continues. As recently as this summer, it was necessary for us to place for legal action the collection of the monies due and owing Brunswick for some masking units at Saginaw Bowl-O-Mat, Saginaw, Michigan."

Will you tell us what that reference is to?

A. Yes. This was one of the matter that Bill Blanks had apologized about, his letter that we read from before. We did buy some new masking units from Brunswick in the summer of 1965. And after considerable delay in installing them—our desire to have them was part of my understanding with Bill Blanks—we wanted to have them installed before the league season opened. We wanted our bowlers to see that we were making some changes in the center. They arrived very late. And then they sent us the wrong ones. They sent us the wrong color. And there were a lot of problems that arose with respect to that. We did pay the bill after some discussion about it.

Q. You referred a moment ago in your testimony to this being a matter about which William Blanks apologized. I show you Plaintiff's 34 in evidence and ask you if you can find and read aloud for us what it is

[626]

you referred to as his apology.

A. Yes. Mr. Blanks' letter, at the end of August 1965, at the bottom of page 2 he talks about the delay in the masking units.

Do you want me to read it, sir?

Q. Please.

A. "Due to the tremendous backlog of orders at our Muskegon factory, and because there are no experienced personnel that can be hired on a part-time basis to assist in removing this log jam, the special color masking units for Saginaw Bowl-O-Mat will be shipped on September 1, 1965. You could tie me to the 'whipping post and give me forty lashes with a cat-o'-nine-tails' and not hurt me any more than I am hurt because of the delays we have experienced in getting these masking units shipped and installed at Saginaw.

"I will do everything in my power to make these past problems only seem like a bad dream and will devote all energies to making our future relationship more pleasant for National Bowl-O-Mat and Brunswick Corporation."

The Court: What is the date of that?

The Witness: This is August 27, 1965.

Q. That reference of Mr. Urbanek to Saginaw, is that what that is about?

[627]

A. I think it is, yes.

Even after Bill Blanks' nice letter, when the masking units arrived, they were still the wrong color. And we had to have them repainted in Saginaw after they were put up. This is my best memory now.

Q. Plaintiff's Exhibit 38 indicates your indebtedness, that is to say, open accounts, is that right?

A. Yes.

Q. Is that what you understand open accounts to mean?

A. Yes, recent invoices.

Q. And not paid, isn't that so?

A. Yes.

Q. Could you just approximately tote up what those three items add up to?

A. One is $234.27, the other one is $310.94. They total $544 that was past due for 60 days.

Q. The grand total is under $9,000, isn't that so?

A. Well, $8,267 had to do with those double order of pins from 1961.

Q. But—

A. Adding those, it still would be under $9,000, even including the double billing for the pins in 1961.

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Q. I ask you, sir, over the years has not Bowl-O-Mat from time to time, or even month to month, owed a great deal more than $9,000 to Brunswick prior to its settlement in full?

A. Oh, yes.

Q. Will you give us some picture of the highest amount that had been owed at different months, just approximately, from your memory?

A. Five, six million dollars.

Q. And, sir, had there been any threat or indication that because of your indebtedness to Brunswick, when you owed monies running into the millions of dollars, that you would be put on a cash basis?

A. No, sir.

Mr. Hoffmann: Your Honor, could I have a minute for arranging papers?

The Court: Yes.

(Counsel arranges papers.)

Q. Mr. Lieblich, in your testimony the other day you referred to an attempt made by you to acquire Fair Lawn Lanes, is that correct?

A. Yes.

Q. Can you tell us, please, succinctly, what it was that you did, what Brunswick did—I'm sorry, what Bowl-O-Mat did in that direction?

[629]

A. Yes. Soon after the bankruptcy sale in Newark, when Brunswick bought all the American National Bowling Corporation centers, including Fair Lawn Lanes, I wrote to Mr. Rudo and asked him could we purchase Fair Lawn Lanes from Brunswick.

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Mr. Hoffmann: I ask that a copy of a communication from Mr. Lieblich to Milton Rudo, dated April 9, 1965, be marked as Plaintiff's 39 for identification.

(Exhibit P-39 marked for identification.)

Mr. Hoffmann: And I ask that as P-40 for identification, there be marked as P-40 for identification a copy of a letter, Rudo to Lieblich, under date of April 19, 1965, in response to that April 9, 1965 letter.

(Exhibit P-40 marked for identification.)

By Mr. Hoffmann:

Q. Do you have the communication of April 9—

A. No.

Q. Mr. Lieblich, I show you Plaintiff's 39 for identification and I ask you if you can tell us what it is?

A. Yes. This is a letter that I wrote to Mr. Rudo after Brunswick had bought the Fair Lawn Lanes at the bankruptcy sale in Newark, expressing our interest in acquiring Fair Lawn.

Mr. Hoffmann: I offer P-39 into evidence.

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-39 received and marked in evidence.)

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The Witness: May I correct that?

It was Fair Lawn, and the possibility of one or two others, I was interested also in acquiring Interstate Lanes in Ramsey.

Q. I show you what appears to be a copy of a letter, Rudo to Lieblich, under date of April 19, 1965, marked as Plaintiff's 40 for identification.

Have you seen that before?

A. Yes.

Q. What is it?

A. This was Mr. Rudo's reply to my letter about the purchase of Fair Lawn Lanes and one or two others.

Mr. Hoffmann: I offer Plaintiff's 40 into evidence.

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-40 received and marked in evidence.)

Q. Addressing yourself to P-40—

A. I can't hear you, sir.

Q. Addressing yourself to 40, please, that is to say, the letter of April 19, 1965, from Mr. Rudo to yourself, do you notice the second paragraph?

A. Yes.

Q. "As I informed you when you and I talked, we will be selling these bowling establishments as

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businesses and not as numbers of lanes for equipment."

A reference is made to a conversation, is it not?

A. Yes.

Q. Did such a conversation take place?

A. Yes.

Q. When did it take place in relation to this letter of April 19?

A. I think it was between my letter to Mr. Rudo of April 9 and his reply of April 19.

Q. Can you tell us the substance of it?

A. Yes. When he received my letter he called me, and I said, "Milt, we'd like to buy Fair Lawn, it is right next to our Paramus center, and Ramsey is not far away, and we'd like to work out arrangements to purchase it."

Q. And do you recall what Mr. Rudo's reply was?

A. He said I would hear from him.

Then I received this letter of April 19.

Q. Notice, please, the third paragraph of the letter of April 19, 1965, that is to say, the letter from Milton Rudo to you:

"Recently one of our people was told that you, Fair Lanes and Mr. Olshan of New York had pooled together a considerable sum of money and had bid for many of the

[633]

AIBC houses."

Do you know to what that refers?

A. Yes. Prior to the bankruptcy sale I did have certain conferences with the president of Fair Lanes and Mr. Olshan, an attorney from New York, who represented various bowling proprietors, to see if we couldn't put together a certain sum of money, and we'd appear at the bankruptcy sale and try to buy ourselves some of these houses.

As I testified yesterday, the day before the sale I met with our Board of Directors, and we decided that we should not participate in that arrangement, and I didn't appear in court that day, and we made no effort to bid at the bankruptcy sale against Brunswick.

Q. Then the next sentence after that in Mr. Rudo's letter:

"I was a little surprised to hear this, Dan, in light of the telephone conversation you and I had,

but I am sure that there were good reasons for you to take this position."

Was there anything in the telephone conversation which sheds some light on this sentence here?

A. Yes. At that time Mr. Rudo couldn't understand why we were trying to hurt Brunswick by appearing at the bankruptcy sale to outbid them.

[634]

And I said, "Milt, we didn't. We had a talk with these people, but we didn't appear."

And still he wrote the letter anyhow.

Q. Do you have any knowledge of what Brunswick had paid to acquire the center at the bankruptcy sale?

A. Yes, that was one of the things that Mr. Rudo had talked to me about on the telephone, he said the acts of bidding at the sale cost Brunswick an extra 400-odd thousand dollars. They had to increase the bids over the other people who were bidding at the sale. I think they spent $450,000 at the bankruptcy sale over the bids of the individual proprietors who were in court bidding for themselves.

Mr. Hoffmann: I ask that Miss Costello mark as Plaintiff's 41 for identification a copy of a letter, Lieblich to Mr. Milton Rudo, under date of April 23, 1965.

(Exhibit P-41 marked for identification.)

Q. Mr. Lieblich, I show you Plaintiff's 41 for identification and I ask you if you can tell us what it is?

A. Yes. When I received Mr. Rudo's letter of April 19 about Fair Lawn and the other centers, that was my reply to him.

Q. And did you receive any reply to your letter

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of April 23?

A. No, I had asked in this letter for copies of operating statements—I don't think I did, Mr. Hoffmann. I may have, but I never received the operating statements that I had asked for in order to be able to determine what kind of an offer could be made to purchase Fair Lawn.

Q. Your letter refers, does it not, to the possible purchase of Fair Lawn?

A. Yes.

Q. And when you say, "We would be pleased to discuss the purchase of the center now if we could examine the operating figures for the last few years," did you receive any reply to that, either orally or in writing, from Mr. Rudo?

A. No, I never received the figures.

Q. Did you receive from Mr. Rudo or anyone else representing Brunswick any further communication concerning the possibility of your purchasing Fair Lawn or the Fair Lawn operation, as it is described here?

A. I don't believe so. There may have been a reply saying that they'd have to mark time for a—for some months, my memory is hazy on that now, but certainly after those few months passed we never heard from them, and I never received any operating figures.

Mr. Hoffmann: Miss Costello, I ask you to

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Plaintiff's 42 for identification a copy of a letter, Rudo to Lieblich, dated May 13, 1965.

(Exhibit P-42 marked for identification.)

Q. I show you what's been marked as Plaintiff's 42 for identification and I ask if you can tell us what that is?

A. Yes.
Q. What is it?
A. Mr. Rudo did reply to my letter.

Mr. Hoffmann: I offer 42 into evidence.

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-42 received and marked in evidence.)

Q. Does this P-42 serve to refresh your recollection?
A. Yes. It is what I thought I had recollected, he said that they weren't in a position then to discuss prices or terms, but that in two or three months they would be able, he said, in another two or three months the situation will be wrapped up in a neat package.

Q. Now, sir, after that time went by, the other two or three months after this letter dated May 13, 1965, did you hear any more from Brunswick concerning the possibility of your purchase of Fair Lawn?
A. No, I did not.

[637]

Mr. Hoffmann: Excuse me, your Honor. May I talk with counsel for a moment?

The Court: Sure. We'll take a short recess.

(Short recess.)

[638]

(After recess.)

Mr. Hoffmann: I now offer Plaintiff's 41 into evidence. It's been identified shortly before the recess, and it's the letter, Lieblich to Rudo, under date of April 23, 1965.

The Court: Any objection?

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-41 received and marked in evidence.)

By Mr. Hoffmann:

Q. Mr. Lieblich, do you owe any money to Brunswick now?
A. No, sir.
Q. Tell me, was that ruling about c.o.d., cash on delivery, ever lifted?
A. No.
Q. You mean you are still on a c.o.d. basis?
A. Yes. Every once in a while a small invoice will slip in, I guess by error, from Brunswick where they—small bill, but basically we're still on a c.o.d. basis, and we still must have monies available at our field operations in order to pay for the receipt of Brunswick parts when we order them for our automatic pinsetters.
Q. Do you know of anybody else in the same position?

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A. No, I don't.

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Mr. Hoffmann: Will you be good enough to mark as plaintiff's Exhibit 44 for identification a document entitled, "Eleven Largest Independent Public Corporations Operating Bowling Centers Compared with Brunswick."

(P-44 marked for identification.)

By Mr. Hoffmann:

Q. I show you what has been marked as Plaintiff's Exhibit 44 for identification and ask if you can tell us what it is, Mr. Lieblich?

A. Yes. This was a chart that was prepared some years ago. The information was taken from the annual reports of Brunswick Corporation and the other public companies in the bowling business, and it shows for a period of four years the net worth of Brunswick, our company, and the ten others, with the gross revenues of Brunswick, and our companies, and the ten others; and the number of centers that Brunswick was then operating, that our company was operating and all the other ten public companies were operating.

Q. The Brunswick entries on P-44 for identification, where do they come from?

A. From Brunswick's annual report for each year.

Q. And the NBO industries, what does that refer to?

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A. NBO Industries is our company, National Bowl-O-Mat Corporation. The name was changed to NBO Industries, now Treadway Companies. But it is our company.

Q. Those entries under that heading, from what was the information taken?

A. From the annual reports of our companies for each of these four years.

Q. Then the ten others, what was the source of the information?

A. From the annual reports of the other publicly held companies in the bowling business, whose annual reports weren't available to us.

Q. I note that the exhibit contains gross revenues as well as net worth. Where was that information derived?

A. From the annual reports of each of the companies.

Q. Both, net worth and gross revenue, from the annual reports?

A. Yes, sir.

Q. Now, sir, the number of centers, the next grouping of data, Brunswick, NBO and then the ten. I take it the ten means the ten others?

A. Right.

Q. The Brunswick, where did that information

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come from?

A. Not from the Brunswick annual report. That information wouldn't have been in the report, but it came from the reports that you subpoenaed from Brunswick, Mr. Hoffmann, and made available to me.

Q. And the number of centers under NBO?

A. We know how many centers we were operating.

Q. And as to the ten others?

A. Almost every annual report of the other companies listed in the reports the number of lanes they had, or else we knew about it, anyhow.

Q. This exhibit goes 1965 through the year 1968. Is there any reason why it doesn't go beyond that?

A. Yes.

Q. What is that, sir?

A. Well, I didn't think it would be a valid comparison because after 1969 many of the companies began—the bowling companies, which at that time were purely bowling—began to diversify, to get out of bowling and to do other things. Our company, for example, began to acquire some motor inns, and then a food division.

Fair Lanes began to go into shopping centers. And they bought a chain of ice cream operations.

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Great Lakes Recreation began to go into the motel business, also. And they had an auto laundry. I think they also went into a nursing home.

It didn't seem to me a fair comparison at 1969 because the bowling companies were doing things other than bowling, they were trying to get away from bowling.

Q. Now, sir, can you tell us, from your memory, who are the 10 bowling centers whose annual reports were examined for the purpose of preparation of this exhibit?

A. Well, I will have to test my memory, because I haven't seen this for some years. Fair Lanes—may I write them down, Mr. Hoffmann?

Q. Yes.

A. (writing) Fair Lanes would be one; Great Lakes Bowling; Bowl America Corporation; American Bowling Enterprises; Major League Lanes; Consolidated Bowling; BCA—Bowling Corporation of America. That's seven. At the moment, I just can't remember the other three. I will try—United Bowling Centers. I am missing two. I will try and think of what they are.

Q. May I suggest to you American Recreation Centers, would that be one?

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A. Yes. Yes, that's in California. Yes.

Q. Did you mention American Bowling Enterprises? I think you did.

A. Yes, I have that one down.

Q. Great Lakes Recreation Bowling Center?

A. I have that down. It may be that the ten others included ours. That could be the missing one. I think that is what the chart really—first, it shows us—yes, I think we would be the tenth.

The Court: What was the name of the one in Baltimore?

The Witness: Fair Lanes.

Q. Do you have any further recollection as to the possible tenth?

A. I think it was ours that was included. That was the purpose, to show all ten. So we do have nine and ours makes the tenth. That would complete the list of ten.

Q. My count may be off. But did you mention General Bowling Corporation?

A. No.

Q. Would that be one of the ten?

A. I don't have that down, so—yes. Yes. It is a public company, and their reports were available to us. Yes, sir; because the top does say the eleven

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largest independent public corporations. So ours was in addition to the ten.

Q. Ten other is what it says?

A. Yes.

Mr. Hoffmann: I offer P-44 into evidence. And I would like to have marked as P-45 a series of handwritten sheets, totalling in all seven pages, and on top bearing the names of the eleven bowling centers just listed by Mr. Lieblich in his testimony.

(P-45 marked for identification.)

The Court: Any objection?

Mr. Seeley: I haven't seen it.

Mr. Hoffmann: We don't have a copy of it.

(Shown to Mr. Seeley by Mr. Hoffmann.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 45 for identification and ask you if you can tell us what that is?

A. Yes, this is Mr. Davis' handwriting. Mr. Davis is the gentleman sitting in the front row, our director of bowling operations. And these are his work sheets that went into the preparation of this study.

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Q. When you say "this study" you are referring to Plaintiff's Exhibit 44 for identification, is that right?

A. The 11 largest independent public corporations, yes.

Q. And do you know from where that runoff was taken, from what source material?

A. Yes, we had the annual reports in our office of each of these companies.

(Document handed to the Court.)

Mr. Hoffmann: Your Honor, in support of my offer of 44 and 45 into evidence I would like to point out simply that perhaps it would have been better if I had marked them as a single exhibit together, but they weren't physically that way in my hand at the time I showed them to the witness. So I have offered them as two separate exhibits.

The Court: Corroborative of the oral testimony adduced from Mr. Lieblich.

Mr. Hoffmann: Yes.

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Mr. Hoffmann: I must continually observe, as a result of Mr. Seeley's repeated remarks, that I have

never in this Complaint, never in anything said in this courtroom, never in my opening statement, made the claim that mere bigness, standing alone, is objectionable under the antitrust laws.

There are some who do make that claim. Economists—there is much literature to that effect. Mr. Justice Burton in his tobacco case said that the mere power, unexercised, to exclude competition, unexercised, is enough for an illegal monopoly.

But this magic phrase, that mere bigness standing alone is not enough comes from the United States Steel Corporation decision of the United States Supreme Court in the 19 teens. And to this we hear this defense asserted—not to the merits of the case, but to the admissibility of a piece of paper which has to do with the combined revenues of 10 other centers, or chains of centers, and our own, as compared with Brunswick.

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Now, sir, I suggest that I would like it clear that once and for all in this case what this bigness argument is. We do not—and I can't repeat this too often. Every time Mr. Seeley rises and says it, if the Court will permit me to, I will rise and contradict it. We do not base this case on the mere size of Brunswick. That is not our claim. It is not in our Complaint. I do not say it now.

But we do base this case, to the extent that it is a monopoly case, on Brunswick's exercise of the power to exclude competition, which I believe has been eloquently shown up to now in the process of putting in our direct case.

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AFTERNOON SESSION.

Mr. Hoffmann: Perhaps before the jury comes in, your Honor, I should state for the record that agreeably with the other side we have put a legend on 44 for identification which would be an asterisk after the name "Brunswick." Perhaps I can show it to you.

(The jury enters the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

Mr. Hoffmann: And then below we have indicated the different totals.

The Court: State that to the jury after they become seated.

Mr. Hoffmann: If your Honor please, we have, with the agreement of counsel for the defendant, put a legend on Plaintiff's 44 so that after Brunswick there is an indication of the total number of centers Brunswick, including a total of the Canadian centers, and that was in 1965.

The Court: Into evidence.

Mr. Hoffmann: I now offer P-44 into evidence.

The Court: Into evidence. 45 also was supposed to go in with that.

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Mr. Hoffmann: 45 was supportive and contains, if your Honor will recall, the handwritten notes from the annual reports.

The Court: Into evidence, 45.

(Exhibit P-45 received and marked in evidence.)

Mr. Seeley: It's just been called to my attention that one of the latter pages of 45 has the same figures. May we have the same legend added to that?

Mr. Hoffmann: The suggestion was made, and it is quite agreeable with me, that similar information be put on the bottom of 45.

The Court: So ordered.

DANIEL PARKE LIEBLICH, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, look, if you will, at Plaintiff's Exhibit 44, including the Canadian centers, in 1965.

Can you make any observation concerning the relationship of the Brunswick net worth to the total net worth of NBO industries and the ten other independent bowling chains which was referred to?

A. Yes.

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Q. What is it, sir?

A. Brunswick's net worth in 1965 was $131,581,000.

The net worth of our company that year was $2,473,000.

The net worth of the ten other bowling chains was $13,448,000.

Mr. Hoffmann: If I may, we are short of copies, I will hold this here near the jury.

Q. Looking at the headings "Gross Revenue for Brunswick in 1965," how much——

A. Brunswick in 1965 had gross revenues of $325 million—pardon me—$325,073,000.

Q. And NBO Industries?

A. In that year we had revenues of $3,276,000.

Q. And the ten others?

A. Ten others had gross revenues of $43,612,000.

Q. Were you present when I gave my opening statement?

A. Yes.

Q. Did you hear me say that the Brunswick revenue exceeded by three times the income of NBO and the ten others?

A. Yes.

Q. Would you look at 1965, the entry for 1965, and tell me if that's so.

A. No, you were wrong.

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Q. In what way?

A. Brunswick's gross revenue is more than seven times that of the combined revenues of our company and the ten other chains in the bowling business.

Q. If I erred, I erred on the conservative side; is that right?

A. Yes.

Q. And then the comparisons are quite similar, are they not, in the years 1965-68, that is to say, the relationships are pretty much the same; is that right?

A. Yes, in each year Brunswick's revenues was about seven times that of all of the other bowling companies.

Q. And so that in 1968 you have a gross revenue of what?

A. Brunswick's gross revenues in 1968 amounted to $434,896,000.

Q. And the gross revenues of all the other bowling chains, sizeable bowling chain proprietors, as reflected by NBO Industries and ten others, totalled what?

A. Ours was $3,261,000, and the other ten were $49,461,000, so it is approximately $52,600,000 being the total revenues of all of the 11 independent public corporations operating bowling centers.

Q. In what way does the net worth figure differ

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from gross revenues—I'm sorry, what is the meaning of "Net Worth"?

A. That's the capital that a company has.

It is made up of both the initial capital plus the accumulation of profits.

Q. And what is the meaning of "Gross Revenues"?

A. Total sales.

Q. Gross revenue is total sales, and net worth is capital; is that right?

A. Their worth, right.

Q. Now, addressing your attention to net worth or capital for 1968, the Brunswick figures of $170 million and some; is that right?

A. Yes, $170,469,000.

Q. And NBO is what?

A. Our net worth that year, $2,746,000.

Q. And the ten other independent proprietor chains?

A. They had $13,172,000 of net worth.

Q. Putting them together they are under $15 million, are they not?

A. Yes.

Q. That is to say, NBO and the ten others?

A. Yes, under $16 million.

Q. And just approximately, and without a

[675]

computer, how do you compare that to $170 million?

A. Less than 10 per cent.

Q. Mr. Lieblich, do you have, without reference to any documents, any approximate figure you could give us for the total lineage that the NBO centers represented in the middle '60's?

To put it another way—let me withdraw that.

Can you tell us what are the total lanes, approximately, that your centers, NBO centers, had?

A. Approximately 400 lanes and pinsetters.

Mr. Seeley: Did I correctly hear 400?

The Witness: Approximately 400.

Mr. Seeley: You both spoke at once, so I didn't get the answer.

The Witness: Approximately 400, Mr. Seeley.

Q. Now, you are operating ten lanes; is that right?

A. Ten centers.

Q. Ten centers, I am sorry.

A. Yes.

Q. And could you average that off then at about 40 lanes per center?

A. Yes, I think the exact number was 396, but approximately 400.

Q. Do you have any picture of the lineage on the

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average, the lineage on the average that was done during the middle 1960's at these centers of yours?

A. Yes.

Q. Could you give us some approximation of that?

A. Yes. In 1961 our lineage per lane, 11,334.

In 1962, it was 10,663.

Q. Without giving it to us for every year, would it be fair to say it was approximately 10,000 lines per lane during the period 1961 through 1970?

A. Well, that's not exactly so.

It was then, a little above that, until 1965, and then it decreased, I would say, from 1965 through 1972, we averaged about 9300 lines per lane.

And for the period 1961 through 1965 we averaged approximately 10,500 lines per lane.

Q. Can you tell us from your memory whether or not the average number of lines per lane which you have just given us represented full capacity use of these centers?

A. Oh, no. A very—well, the best way I can answer that is to say that in the years before 1961 Paramus Bowl-O-Mat, one of the plaintiffs here, and two other bowling companies in which I was involved, did lineage per lane in excess of 15,000 for three years in a row.

So our average of 9500 lines per lane in the years

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1965 through 1972 is a considerable reduction from that which we were able to realize in earlier years.

Q. Assuming capacity bowling, that would be three shifts per day, wouldn't it, or would it be 24 hours a day?

A. Well, yes, we are capable of operating 24 hours a day, and I do recall late in the back '59's and early '60's when we did operate 24 hours a day.

Q. If that were to happen have you any way of telling us how many lines per lane would be bowled?

A. Yes. I recall visiting two bowling centers in 1960 and looked at their books and records for the purpose of seeing if we could buy them, and they were then doing 20,000 lines per lane.

I never saw a bowling center do more than that, but nonetheless, these two centers were doing 20,000 lines per lane. And I know of other people who have had similar experiences.

Q. Then, sir, putting things together, you were doing perhaps 10,000 lines per lane?

A. Yes.

Q. Is it fair to state that from the testimony you have just given that the maximum per lane could have been 20,000?

A. Yes.

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Q. And that 20,000 lines per lane, was that lane equipped with Brunswick automatic pinsetter equipment?

A. It would have been either Brunswick or AMF, you have to have an automatic pinsetter to get that kind of lines.

Q. Is the equipment comparable, AMF and Brunswick?

A. Yes.

Q. Work at about the same rate of speed?

A. Yes.

Q. Would that be the A-1 type of equipment?

A. These were slower ball returns back in those days, slower machines.

Q. Is that what you refer to as the A-1?

A. Yes.

Q. Isn't A-1 the equipment which was generally used in your centers?

A. Yes.

Q. Does it follow from what you have just said that if there were A-2 equipment used, it might result in even more lineage per lane?

A. It could, yes.

Q. How long does it take to bowl a game on, using an A-1 pinsetter, approximately?

A. Well, I guess that depends upon the bowler, depends

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upon how fast he throws the ball, how much he waits to throw a second ball. If there are children sometimes they take long.

It is very hard to give a specific answer on that. I know that our——

Q. Do you in your supervision of your centers have some average, approximate figure that's used to reflect the time taken to bowl a game?

A. Yes. It shouldn't take any more than ten minutes to bowl a game.

Q. Tell us about your centers; are they closed any length of time during the year?

A. No, we shut down so all our employees can observe Christmas, but we are open seven days a week, 364 days a year——

Excuse me, there may be a time during the year when our lanes are resurfaced. When our lanes are resurfaced, there is a very heavy odor that comes from the resurfacing material; and it is also flammable so that the Board of Health in communities often has us close down during that six or seven days when lanes are being resurfaced, but other than that they stay open all of the time.

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Q. Do you have several shifts of employees at your center?

A. Yes.

Q. When you say you are open every day, for how many hours, on the average?

A. Well, if we have a midnight league, then we stay open later. It depends on our traffic. Normally we might close on a Saturday night at 1 o'clock or 2 o'clock. If there are a lot of people still in the center, then our night

man will just stay on later to keep open as long as there is business.

Q. Now, sir, are you equipped to stay open 24 hours a day, if the demand is there?

A. Yes, sir.

Q. Mr. Lieblich, you testified yesterday concerning Exhibit in evidence 27, Mr. Hanigan's remarks at San Juan, Puerto Rico, at the PBAA meeting in 1965, in June. I want to address your attention, please, to one more point in that exhibit. Do you notice this item 1?

A. (Shown to the witness) Yes.

Q. Would you read it, please, aloud.

A. Yes. This is what Mr. Hanigan said at the convention. The first point in the operation of bowling centers is:

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> "1. Where any such bowling establishment is to be operated by Brunswick Corporation, directly or indirectly, through a corporate subsidiary, separate books and records should be kept reflecting in detail the capital investment, income and expenses of each such establishment."

Q. Do you know if that was done?

A. Yes, sir; I do.

Q. Did you have occasion to see such books and records?

A. Yes, I have.

Q. Did you have occasion to work with that in connection with this law suit?

A. Yes, sir.

Q. And what was it that you did?

A. After you subpoenaed the Brunswick records, and received from them the copies of the profit and loss statements of each their BCOD centers, I, with our Accounting Department, analyzed all of their figures and prepared certain spread sheets from their figures.

> Mr. Hoffmann: Miss Costello, will you please mark as 46 for identification a document entitled, Analysis of Profit or Loss of BCOD Centers, running through the years 1965 to 1972.
>
> Your Honor, I am just removing the last

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> two pages from this analysis because they relate to the Canadian bowling centers.
>
> (Exhibit P-46 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 46 for identification and ask if you can tell us what it is.

A. Yes. This is an analysis of the profit or loss of all of the BCOD centers. We took the records that you had given us, Mr. Hoffmann, from Brunswick Corporation, and on each of these 16 sheets we put down each of the Brunswick Centers, the number that Brunswick had given to them in their records, the name of the center, its location, the number of lanes that it has, and then the profit or loss in each year of their operation from 1965 through 1972.

Q. Was all this data taken from the Brunswick records?

A. Yes, sir.

Q. Go along the first line, please.

A. All right, sir. Yes. The first line is: Center number 102. The name is Interstate Lanes. The location is Ramsey, New Jersey. The number of lanes is 40.

Q. Permit me to interrupt at this point. Would you tell us the source of that information?

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A. From the profit and loss statement of Interstate Lanes at Ramsey.

Q. Now, then, for 1965, the first entry?

A. Yes, in 1965 the operation at Ramsey lost $31,742.

Q. Without going through all of the data on the sheet, is it your testimony that all of this was taken from the Brunswick books and records furnished to you pursuant to subpoena?

A. Yes, sir.

Mr. Hoffmann: If your Honor please, I offer plaintiff's 46 into evidence.

VOIR DIRE EXAMINATION.

By Mr. Seeley:

Q. Mr. Lieblich, are the Brunswick books and records from which you made up plaintiff's Exhibit 46 here in the court?

A. No.

Q. Do you have a sample of them?

A. Yes.

Q. May I see it, please?

Mr. Hoffmann: Could I inquire of you, counsel, as to whether or not Brunswick maintains the profit and loss figures for the various

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centers here in the courtroom?

Mr. Seeley: I think so.

Mr. Hoffmann: Those were the materials which were given to us.

Mr. Seeley: I just want to see if you are using the same ones I am using.

Mr. Hoffmann: All right, sir.

A. Yes, Mr. Seeley. Here is one. It is the one I read, number one or two, Interstate Lanes, Ramsey.

(Handed to counsel by the witness)

Q. Thank you.

A. That is what we received from Brunswick.

Mr. Seeley: Just for future reference, I would like to mark for identification only, the document which the witness has just handed me.

The Court: If you have no objection, I will permit it. Normally, he should do it on his own case.

Mr. Seeley: I am not going to introduce it, I just want to identify it for later reference.

The Court: Let it be marked for identification.

(Exhibit D-1 marked for identification.)

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The Court: What would be a short legend on it, Mr. Seeley?

Mr. Seeley: It is captioned Interstate Lanes, Ramsey, New Jersey, at one corner. Then across the top Profit or Loss Statement, page number one, December 1972.

The Court: Thank you.

(Document returned to the witness.)

Mr. Seeley: Subject to our having an opportunity to check the accuracy of the figures, we do not object.

The Court: Into evidence.

(P-46 received into evidence.)

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, looking at defendant's 1 for identification, can you state, by examining that, whether that is a record from which the first line on 46, having to do with center number 102, Interstate Lanes, was prepared?

A. Yes.

Q. And is that a record coming to you from Brunswick?

A. Yes, sir.

Q. And were there, or are there similar records for all of the entries for the different Brunswick

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centers indicated on plaintiff's Exhibit 46?

A. Yes, sir; every one for every year, 1965 through 1972.

Q. And in respect to that matter, did you hear Mr. Seeley say a moment ago that Brunswick has such records here in court?

Mr. Seeley: I think so, I said.

Mr. Hoffmann: With that modification.

Mr. Seeley: If not, we have some 30 boxes back in the office.

Mr. Hoffmann: No issue has been posed about them by me, sir.

Q. Mr. Lieblich, going down again along the lines of 102, in respect of Interstate Lanes, there is a figure in parenthesis under 1965. That's $31,742, is it not?

A. Yes, sir.

Q. What does that show?

A. Where there is a figure in parenthesis, it means that there was a loss for that year. If there is no parenthesis, it means there was a profit.

Q. And so, you are saying that in '65 that is a loss figure?

A. For Interstate, yes. They lost in 1965 $31,742.

Q. Up on top it says, "BCOD Centers." Again,

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what does BCOD stand for?

A. The Brunswick Corporation operating division. Centers Brunswick took over and is operating.

Q. If you go down the column it shows the number of lanes.

A. Excuse me. Or maybe some new ones that they are now operating directly.

Q. If you go down the number of lanes, you see after the item 107 Plaza, Haverhill, Massachusetts, you see TP, what does that signify?

A. That stands for tenpin lane.

Q. And then right beneath it, also in association with the line for 107, Plaza Lanes, 12 CP; what does that stand for?

A. Candlepins. That means that center has 32 lanes, of which 20 were tenpins and 12 were candlepins.

Q. And if you will look farther down on that line, after 112, Fox Field Lanes, you will see an indication of DP; what does that stand for?

A. Duckpin lanes. That means that Fox Field Lanes, number 112, had 24 lanes in their center, of which 16 were tenpins and 8 were duckpins.

Q. Can you find other examples of DP and CP?

A. Yes, I think I can, sir. Where we have nothing opposite the lane, it means there are only tenpin

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lanes. On page 2, number 129, there is another center having 32 lanes, of which 20 were tenpins and 12 were candlepins.

On page 3, number 205, there are 20 duckpins.

Page 5, Holyoke Lanes up in Massachusetts, a 44 lane center, had 12 candlepins.

On the same page, Northampton Lanes, number 227, Northampton, Massachusetts, again has 10 candlepin out of 32 lanes.

I think that is about the end.

Q. That is all that applies to duckpins and candlepins at BCOD centers?

A. Yes, sir.

Mr. Hoffmann: I ask you, please, to mark as plaintiff's 47 for identification a multi-page document, spread sheet, titled, An Analysis of Profit or Loss of BCOD centers.

(P-47 marked for identification.)

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Q. Mr. Lieblich, you have Plaintiff's 47 for identification in your hands?

A. Yes.

Q. Can you tell us what that is?

A. Yes. This is an analysis of profit or loss of the Brunswick centers compared to their operations in the hands of the independent proprietor.

Q. Now——

The Court: Could I have 47, somebody?

Mr. Hoffmann: I'm sorry, your Honor.

Q. This is called "Analysis of Profit or Loss of BCOD Centers"; is that right?

A. Yes.

Q. That was the same title given to the previous exhibit; is that right?

A. Yes.

Q. 46.

What is different about 47 for identification?

A. In this exhibit there are two lines for each of the Brunswick centers.

The first line is their profit and loss, which is taken from the exhibit just introduced into evidence; and the second line reflects that same center in the hands of the independent proprietor.

Q. Now, coming back to 102, the first entry,

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which is Interstate Lanes in Ramsey, New Jersey, you have a top line, first line, which refers to 40 lanes and the loss in 9/65, 31,742, and runs figures across the line through 1972; is that right?

A. Yes.

Q. Is that the same as the line shown in Plaintiff's Exhibit 46?

A. Yes, it is.

Q. And does it come from the same sources?

A. Yes, it is the same figure.

Q. Now, on the second line, Interstate Lanes again, you have no entry at all from 1965?

A. That's right.

Q. Why is that, sir?

A. Well, 1965 was not a full year of Brunswick operation, and we didn't think there would be any point in having any comparison in that.

In each of the subsequent years they were full year, but 1965 being a start-up year for Brunswick, we couldn't in any way put a comparison of profit or loss in the hands of an independent proprietor.

Q. Now, you do so in 1966, you have your second line devoted to independent proprietors; is that your testimony?

A. Yes.

[691]

Q. And there you have a negative figure of 12,531 beneath the positive figure of Brunswick of 11,392.

Tell us how the figure of 12,531 was arrived at.

A. Yes. The only difference between the Brunswick figure of 11 thousand—the only difference between the Brunswick figure of a profit of 11,392 and the proprietors' loss of 12,531 is a difference in two items.

We have added to Brunswick's figure from their records the cost of depreciation for a proprietor over and above that which Brunswick had to pay on its records, and the only other item we put down was the cost that the proprietor would have for interest on the lanes and pinsetters involved in a similar center.

Q. Now, the depreciation and interest factor are those about which you testified which appear on this enlargement?

A. Yes.

Q. Although the number doesn't show, I hope——

The Court: Do you have a piece of Scotch tape or something to put that corner back?

Mr. Hoffmann: Your Honor, I have taken the liberty of putting down Plaintiff's Exhibit 1. I have that's sufficiently legible to read.

It is not otherwise identified.

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Q. Look again at the 1966 figure—I'm sorry, Interstate Lanes, 11,392 is the Brunswick operation figure, is that right, and that's an affirmative figure?

A. Yes.

Q. Under Interstate Lanes you have a negative figure of 12,531.

You say that that was arrived at by computing interest and depreciation?

A. Interest and depreciation that a proprietor would have beyond the amount of depreciation which Brunswick's books reflected that they had taken for Interstate Lanes in Ramsey.

Q. Can you by reference to Plaintiff's Exhibit 1 point out again how the interest factor was arrived at?

A. Yes. The interest that would be the obligation of a proprietor on an annual basis would be for the first five years, $102 on the bowling lane, and $218 on the pinsetter.

So the proprietor would have an interest charge of $320 per year on the lane and pinsetter if he was paying off Brunswick.

Q. Is this the figure to which you refer?

A. Yes, and that's at 6 per cent interest.

Q. Computing as you explained in connection with Exhibit 1?

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A. Yes.

Q. Was there anything else that you wanted to say about the 12,531?

A. Yes. Brunswick did not charge any interest in its profit and loss statements for the equipment, and knowing that the proprietor would have the interest charge, we increased the expense for the proprietor by that amount.

The other amount that we included was depreciation, as that exhibit reflects, the independent proprietor would have a charge of $1,000 per lane per year for depreciation.

Now, Brunswick did show on its books some depreciation, so we subtracted from the $1,000—let's take a 40-lane center—we subtracted from $40,000 the exact amount that Brunswick reflected here they did take, and the difference we included as an expense that the independent proprietor would have.

And adding from Brunswick's end result the additional interest and the additional depreciation, we come to the second line of the exhibit, which shows how the independent proprietor would have made out running that center during the year in question.

Q. Now, sir, there are Brunswick-operated centers running with—with information supplied by Brunswick

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running throughout this exhibit, are there not?

A. Yes, they are all of the Brunswick figures on all 17 pages.

Q. In every case on those seventeen pages would the first line relating to the name of the center and its location and number of lanes and so forth show what Brunswick itself has indicated as its profit or loss?

A. Yes.

Q. And—then the second line, is that a line that you uniformly use for the independent proprietor?

A. Yes, sir.

Q. And it makes—it applies a calculation found in Plaintiff's 1; is that right?

A. Yes.

Q. In order to come out with a different figure from that given by Brunswick; is that a correct description of what has happened here?

A. Yes.

The Court: Just to clarify it for the Court, so that in 1966, using your figures, Mr. Leiblich, used by you as far as Brunswick is concerned, an individual proprietor would have lost $12,531 if he had to carry depreciation, interest, and what else?

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The Witness: That's all.

The Court: Just those two?

The Witness: Right, that's the only changes between Brunswick's figures and——

The Court: And 1967, line 2, the figures that the average individual proprietor——

The Witness: Your Honor, in 1967 the Brunswick Corporation showed a profit of 34,581, the independent proprietor would have made 10,530——

The Court: All right.

Mr. Hoffmann: May I have marked, please, Plaintiff's 48 for identification a document entitled—spread sheet entitled "Analysis of cash flow."

(Exhibit P-48 marked for identification.)

Mr. Hoffmann: Containing a number of pages bound together, reflecting the years 1965 through 1972.

The Court: I notice on top of the exhibit it doesn't say BCOD. Is it BCOD?

Mr. Hoffmann: Indeed, sir, it is an analysis of cash flow for BCOD centers, and perhaps I can physically mark it in longhand.

The Court: Please.

Mr. Hoffmann: Perhaps you will do that for

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yourself, Mr. Seeley?

Mr. Seeley: I have done it, sir.

The Court: I have one.

Mr. Hoffmann: Thank you, your Honor.

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you Plaintiff's 48 for identification, entitled "Analysis of cash flow for BCOD centers."

Tell us what that is, please?

A. Yes. This exhibit, which is entitled "Analysis of cash flow for BCOD centers," is intended to show the cash that was available in each of the centers in Brunswick's hands during the years of their operation, and a second figure appears which is the amount of cash that an independent proprietor would have needed to make his payments to Brunswick on his equipment debt to Brunswick for the lanes and the pinsetters.

Q. Well, come out of the first entry again. That's 102 Interstate Lanes, Ramsey, New Jersey, just as you have had it on top of the other document.

What is the source of the information there in the first line?

A. The profit and loss statement of Brunswick's Interstate Lanes at Ramsey.

Q. Is that the same as to be found on Plaintiff's

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46 and Plaintiff's 47?

A. The difference between 46 and the first line in this figure is that we added to the Brunswick profit, net income,

what their books showed for depreciation, because cash flow is a result of adding together net income plus depreciation, which we call a non-cash item.

That's the only difference between the net income figures in the first exhibit and the cash flow figure in this exhibit.

[698]

Q. And would you explain briefly, please, what is meant by "depreciation"?

A. Well, I will go back to the illustration of the adding machine, which cost $150 and it is good for 10 years.

You set aside by bookkeeping $15 each year as depreciation, as to the life of the adding machine, so that theoretically at the end of the 10 years you have saved $150 so that you may buy a new adding machine.

Q. I notice that in 1965 when you applied depreciation, you come out with a figure which is a smaller loss than the Brunswick figure; is that right?

A. I don't understand——

Q. Well, if you will look——

If you will be good enough to look at plaintiff's 46 in evidence——

A. Excuse me, sir.

Q. Which is the analysis of profit and loss.

A. Yes.

Q. I have it here.

You notice the 1965 figure?

A. Yes.

Q. Is the negative parenthesis figure of $31,742?

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A. Yes.

Q. And in your analysis of cash flow for BCOD centers for 1965, what is the figure?

A. 14968.

Q. That's a lesser one?

A. Yes.

Q. Is that because you accommodated depreciation as you described it?

A. Yes.

Q. Now, then, is it true of all of the entries under the different years, 1965-1972, that you have applied depreciation in the way you have just described?

A. Yes, sir.

Q. And is it that which accounts for the differences between the first line under 102 and the first line which is to be found on plaintiff's 46?

A. Yes.

Q. And would the same be true for the various first lines throughout the exhibit entitled, "Analysis of Cash Flow for BCOD Centers"?

A. That's right.

Q. Now, sir, please look at that analysis as to the second line, which is just below the first.

What does that reflect?

A. That is intended to show the cash that the in-

[700]

dependent proprietor would need to pay Brunswick for the lanes and the pinsetters.

Q. How is that arrived at?

A. It comes from——

Q. Would you care to come forward and show us?

A. If you want to, but I can do it from here.

Exhibit 1 shows that the bottom cash need.

It shows that for the pinsetter, dividing the eight years of the contract into the total cost of $9,348 there would be an annual cost of $1,168 for the pinsetter.

The lane, which was a five year contract, total contract of five years with interest, $4,113, means the proprietor would have to pay $823 per year for five years for that.

Adding together the $1168 and the $823, the total cash need of the proprietor to make his payments during the year would be $1,991, and we round that out to $2,000 to illustrate it a little more clearly.

Q. And that $2,000 is per lane, is it not?

A. Yes.

Q. And then what did you do in your second line of calculations under the 102?

A. Just multiplied $2,000 by the number of lanes involved, so that Interstate Lanes was 40 lanes, 40

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times 2,000 is $80,000.

That's the cash that an independent proprietor would need to pay his equipment obligations to Brunswick.

Q. Now, was that calculation made in the same way for all of the different BCOD centers which are listed on plaintiff's 47—48 for identification?

A. Yes, with one additional qualification.

Q. What is that?

A. In 1971 and 1972 the figure for the independent proprietors drops now from $80,000 to 47,080.

The reason for that is since the lanes were theoretically paid for on a five-year basis, the proprietor wouldn't need cash in those last two years for his lanes. He'd have to continue the payments on the pinsetters but he wouldn't have to pay off on the lanes.

Theoretically, they would have been paid for after these five full years.

Q. Could you come at that more slowly, please?

A. Yes.
Q. The lane contract was how many years?
A. Five years, financed over five years.
Q. Is that what is indicated over here on the exhibit 1?
A. Yes, it is.

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Q. And how long is the pinsetter contract?
A. Exhibit 1 reflects, pinsetter, the pinsetter was financed over a period of eight years.
Q. And that's indicated here; is that right?
A. Yes, it is.
Q. And in getting the need for the—the cash need for the independent proprietor you divided, did you not, the contract length of time, that is, eight years in the case of the pinsetter and five years in the case of the lane, into the total unpaid balance and interest; is that right?
A. Yes.
Q. So is it then your testimony as to 1971 and 1972 that you accommodated the circumstance that the eight years for the pinsetters and five years per lane have expired?
A. Yes, we took that into consideration in preparing the comparison.

Mr. Hoffmann: I now offer 47, plaintiff's 47, which is the analysis of profit and loss for BCOD centers, and 48, which is the analysis of cash flow for BCOD centers.

The Court: Any objection?

Mr. Seeley: One question, first.

The Court: Yes.

[703]

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Mr. Lieblich, in accounting practice, as you understand it, in the calculation of the cash flow of a business, are contributions to capital subtracted from annual income?
A. No, I don't believe so.
Q. Is it not true that on plaintiff's 48, entitled, "Analysis of Cash Flow," on the second line in each case a contribution to capital, that is part of the cost of the pinsetters, has been counted as a depreciation from cash flow or as a part of cash flow?
A. I don't understand your question.
Q. All right. On Plaintiff's 48, that is headed, "Analysis of Cash Flow," is it not?

The Court: Do you have it in front of you, Mr. Lieblich? P-48.

Mr. Hoffmann: It is entitled, if I may just point it out, Mr. Seeley, "Analysis of Cash Flow for BCOD Centers."

Mr. Seeley: Does that mean it is something else for others?

The Witness: I have this one. That's 48?

Q. Then I have another question.
The second line opposite the name of each bowling center is that supposed to be an analysis of

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cash flow for hypothetical, independent operators?
A. No.

Mr. Seeley: Your Honor—which ones did you offer?

The Court: 47 and 48.

Mr. Hoffmann: Yes.

The Court: Analysis of cash flow and the other one.

Mr. Seeley: The defendant objects to the three exhibits, your Honor—

The Court: Two. 47 and 48.

Mr. Hoffmann: 46 is in evidence, your Honor.

The Court: I say 47 and 48, the only two that are not in evidence.

Mr. Seeley: 47 and 48.

The Court: Yes.

Mr. Seeley: On the ground that the independent exhibitors whose figures purport to appear thereon are entirely mythical persons, that it has not been shown by the evidence that they correspond to any identifiable, real, independent exhibitors or to any average real independent exhibitors;

On the further ground that it appears from

[705]

the way these exhibits were made up that they refer to a mythical independent exhibitor who purchased his equipment new from Brunswick in 1965.

There is no evidence that there were any such exhibitors or indeed, that there was any market of any consequence for new Brunswick equipment in 1965.

And on the further ground that the analysis made here purports to include in the independent exhibitors income and in his cash flow comparison his needs for cash to pay off indebtedness to Brunswick and interest on such indebtedness.

It has been admitted that Brunswick Corporation has cash needs for those purposes, although the amount has not been shown, and I object that that is not cured by labeling these BCO, because the plaintiffs in this case and others who were actually proprietors are not competing with BCO as if it was floating in space, they are competing with Brunswick Corporation, one of whose arms or hands is BCO.

I, therefore, submit that the comparison is misleading.

The Court: Mr. Hoffmann.

Mr. Hoffmann: If your Honor please, we have

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extensive discussion of this assumed proprietor, hypothetical proprietor, in connection with the admissibility of plaintiff's 1.

Your Honor received that exhibit, and this is simply a mathematical or arithmetical computation of the concepts underlying interest and depreciation and cash need which are found on plaintiff's 1.

What we have done is simply to take this principal, which plaintiff's Exhibit 1 embodies and applied it to the known figures of Brunswick, which were furnished us in response to subpoena.

So the objection cannot be in relation to Brunswick's figures, the first line for each one of these BCOD operated center.

Now, knowing what the figures are for those, we, because we accepted what Brunswick has told us and used those figures, we now ask ourselves the question, what would happen if BCOD were not operating the center, because an independent proprietor was.

And there is no mystery about this. Our answer to the question is, what would happen would be that the individual proprietor would have to pay out interest, as is indicated on Exhibit 1,

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and in that average amount, and he would also have to have depreciation in the amount which is shown by Exhibit 1.

So we have taken Exhibit 1 in effect and applied it to the information furnished us by Brunswick as to each of its own centers.

Now, the reason for it, I don't think needs to be discussed because Mr. Seeley has not based his objection on relevancy as to the issues in the case. If I understood him correctly, his objection is based upon the fact that this is a hypothesis, and that hypothesis, I submit, has already been ruled upon by your Honor in connection with the admissibility of Exhibit 1, and so I urge the admission of these documents.

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The Court: Anything else, Mr. Seeley?

Mr. Seeley: No, sir.

The Court: I agree with Mr. Hoffmann. Into evidence, over the objection of the defendant, P-47 and P-48.

(Exhibits P-47 and P-48 received and marked in evidence.)

Mr. Hoffmann: Miss Costello, would you be good enough to mark as P-49 for identification a one-page document entitled BCOD consolidated summaries compared to operations in hands of individual proprietors, and bearing the legend "Domestic operations only."

(Exhibit P-49 marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, you have in your hands Plaintiff's Exhibit 49 for identification?

A. Yes.

Q. Can you tell us what it is?

A. Yes, sir. This is a comparison of the Brunswick-operated centers on a consolidated basis rather than on an individual basis, that it was in the last exhibit, but on the overall, compared to on the overall in the hands of individual proprietors.

Q. What is the basis for the data displayed on

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this exhibit for identification?

A. The Brunswick figures, implemented only by the factors in Exhibit 1, showing the interest that a proprietor would have, and the depreciation that a proprietor needs, less than what Brunswick itself had taken.

Q. Is this a consolidation of the information found in Plaintiff's Exhibit 47, which is the analysis of the profit and loss of BCOD centers?

A. Well, it really came from the—not from that, sir. It came from the specific document of Brunswick on consolidated profit and loss.

Q. Those documents being the ones similar to Defendant's Exhibit 1 for identification?

A. Yes, but on a consolidated basis. Instead of having—they have one overall summary, with the same income and expenses on all their operations. That is what we call the consolidated summary.

Q. Then the information comes from Brunswick, is that right?

A. Yes, sir.

Q. With, again, what calculations of your own, what did you provide for this exhibit for identification which Brunswick did not provide?

A. The only calculations that we added to this was

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interest at $320 per lane, as we have on Exhibit 1, plus depreciation on the basis of $1,000 per lane, less the depreciation which Brunswick itself reflected in its consolidated summaries.

Q. The Brunswick depreciation is Brunswick's own figure, not something you computed?

A. That's right, sir.

Mr. Hoffmann: I offer, your Honor, Plaintiff's Exhibit 49 into evidence.

The Court: The same objection?

Mr. Seeley: The same objection.

The Court: Into evidence, 49.

(Exhibit P-49 received and marked in evidence.)

The Witness: Mr. Hoffmann, I noticed one typographical omission, if I may, sir. In 1966, in the line for individual Brunswick net, the figure is $1,136,000 loss. That "1" was left out.

Mr. Hoffmann: May we correct that? It seems apparent.

The Court: So ordered.

Mr. Hoffmann: Lady and gentlemen of the jury, on the line for individual Brunswick net, under the year 1966, one number has been inadvertently left out. It should read $1,136,000 rather than $1,036,000.

[711]

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, would you please look at the first line, number of centers, on Plaintiff's Exhibit 49, and tell us what does that mean?

A. That is the number of centers that Brunswick was operating at the end of each of these years, 1965 through 1972, as reflected in their consolidated summary.

Q. And when you say at the end of the year, you mean at the end of the calendar year, that is to say, December 31?

A. Yes. The report was December of each year. And this figure of 124 for 1965 and 167 for 1970 was the number reflected in Brunswick's consolidated summary for that year.

Q. It doesn't necessarily mean, does it, that during the whole year 1965 there were 124 centers in the hands of BCOD?

A. It probably does mean that, yes. Excluding the Canadian ones, yes.

Q. Well, sir, the information you have is as of the end of the fiscal year, is it not?

A. It is whatever Brunswick reported that we had then.

Q. But is the figure given for the end of the fiscal year necessarily the figure which Brunswick might be operating, that is, the number of centers Brunswick

[712]

might be operating during the entire fiscal year?

A. I can't speculate. That 124 is the figure we took from Brunswick's records.

Q. The answer is, then, that you don't know whether that reflects the entire year '65 or not, is that right?

A. That's right. That's the number they had down as being operated at that time.

Q. As of that particular date, December 31, 1965?

A. Yes, sir.

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Q. Is the same true throughout the years '65 through '72?

A. Yes, whatever was the Brunswick record, we put down in this chart.

Q. Then the number of lanes in the next line, where did you find those?

A. Right from the Brunswick summary itself.

Q. And in '72, those are 5200, is that right?

A. Yes.

Q. As against what for 1965?

A. 3,629.

Q. Is it fair to say, if you look across the page at numbers of lanes, that they increase each year, with one exception, that being 1969?

A. That is correct.

Q. Would you look at the number of ten pin lanes, please?

A. Yes.

Q. Again, with the exception of 1969, there is a steady increase, is there not—or an increase? I'm sorry.

A. Yes, there is, sir.

Q. And it goes from what in '65?

A. From 3,519 ten pin lanes in 1965 to 5,110 in 1972.

Q. The next line is profit and loss, a loss in

[714]

parentheses, is that right?

A. Yes. Where there is a parenthesis it means there was a loss. If there is no parenthesis, it means there was a profit during that year.

Q. And the source for that information?

A. Brunswick's consolidated summary sheets.

Q. And during each of the years 1965, 1966, 1967, 1968, am I correct in saying that the Brunswick-operated centers resulted in a loss, according to Brunswick's own figures, is that right?

A. Yes, sir.

Q. That situation changes in 1969, does it not?

A. Yes. A profit of $357,000 was reflected in 1969.

Q. And by '72 it had reached what?

A. In 1972 they made a profit of $6,296,000.

Q. Starting in 1965 there is a loss figure, is that right?

A. Yes, they lost in 1965 $2,171,000.

Q. The next part of the exhibit, the heading is "For individuals," and then "Brunswick net.". That Brunswick net line, is that not the same as the line just above, profit and loss?

A. It is identical to the line above. It's Brunswick's profit or loss for that year.

Q. Then in the next entry beneath that, there is

[715]

interest at $320 per lane, for ten pin lanes only.

A. Yes.

Q. From what is that derived?

A. From Exhibit 1. We multiplied the interest from Exhibit 1 of $320 per lane times the number of ten pin lanes that Brunswick was operating during the year in question.

Q. This is the figure, $320, that you are referring to? (Indicating.)

A. Yes, Mr. Hoffmann.

Q. And then the next entry is depreciation?

A. Yes.

Q. How was that computed?

A. From Exhibit 1 we have depreciation—the middle, Mr. Hoffmann—we have depreciation of $1,000 per lane based on our original cost of $15,000 for all the equipment. We then multiplied $1,000 per lane, times the number of ten pin lanes that Brunswick was operating during the year in question.

Q. Now, having done all that, you have a total, do you not, for interest and for depreciation for ten pin lanes?

A. Yes.

Q. And is that totalling designed to reflect what the situation would have been for an individual

[716]

proprietor rather than Brunswick-operated division?

A. Right, sir.

Q. And those figures were derived at by the method just used, is that right?

A. Yes.

Q. Just described. I'm sorry.

A. Yes, sir.

Q. Casting your eye along the line for interest, they all come out with a negative total, do they not, or a loss total?

A. Yes.

Q. What does that mean, sir; what is this all designed to show, this line of interest at $320 per lane?

A. Well, it means that Brunswick didn't put down an interest charge. And the individual proprietors would have had an interest cost. So the purpose of this total is to show what interest would have cost the independent proprietors who were operating this number of centers during the year in question.

Q. And looking again—you have a total of $9,953,000 for interest?

A. Yes, that would have been the total of interest payments due from proprietors over the period of eight years.

[717]

Q. And that number exceeds, does it not, the Brunswick net reflected in the line just above?

A. Yes, that's true.

Q. That was $8,577,000?

A. Yes, sir.

Q. Now, going down to the next line, depreciation, at a thousand dollars per lane, tenpin lanes only; again, was that line created the same way, by applying the depreciation figures as found on plaintiff's 1?

A. Yes, sir.

Q. And when you get through with that, what do you have as a grand total?

A. The total, $34,352,000.

Q. Now, you have a final line in which you say, "less Brunswick depreciation."

A. Yes.

Q. Will you explain the meaning of that?

A. Yes. Brunswick did reflect on its consolidated summary depreciation of $16,415,000 over this period. And since the proprietors would have had depreciation of $34,352,000, subtracting $16,415,000 from $34,352,000 means that the independent proprietors would have had additional $18,000,000 of depreciation expense on their books which Brunswick did not reflect on its books.

[718]

Q. I know you have just done this arithmetic yourself, but if you look at the total column on the right, there is a bottom line figure of $19,313,000.

A. Yes.

Q. Is that more accurate than the eighteen million you just used?

A. No, sir.

Q. Or is that something different?

A. The eighteen million was reasonably correct for that depreciation. The total of $19,313,000 means that during these eight years proprietors would have reflected a loss of $19,313,000 in operating these various centers.

Q. That is, if they had these charges referred to on the exhibit, that is, interest and depreciation.

A. Yes, sir.

Q. Found in plaintiff's 1, is that your testimony?

A. That is correct.

Mr. Hoffmann: Would you mark as plaintiff's Exhibit 50 for identification a one-page spread sheet entitled BCOD Consolidated Summaries, Brunswick Cash Flow Compared to Cash Needs of Individual Proprietors, Domestic Operations Only.

[719]

(Exhibit P-50 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 50 for identification and asked you if you can tell us what it is?

A. Yes, this is a comparison from the Brunswick consolidated summaries of the cash that they reflected from the operations of these centers compared to the cash needs of individual proprietors who have been called upon to make their payments to Brunswick for the lanes and the pinsetters.

Q. Looking at it more closely, Mr. Lieblich, again the entries—the period of time is 1965 through '72, is that right?

A. Yes, sir.

Q. And you have the numbers of centers listed. Are those the same numbers found in the first line of the previous three exhibits?

A. Yes, sir; they are the same numbers.

Q. And then the number of lanes, are those number of lanes, lanes of Brunswick operated centers?

A. They are the same numbers, sir.

Q. And in every instance derived from Brunswick figures supplied to us, is that your testimony?

A. Yes, sir.

Q. And then tenpin lanes, number of tenpin

[720]

lanes, how is that number arrived at?

A. That is the same figure as we had in the prior exhibit.

Q. Did you take, in order to get that, the total number of lanes and subtract the candlepin and duckpin lanes, as indicated?

A. That is correct.

Q. Now, then, there is a profit and loss line, again running across from '65 through '72. What is the origin of that?

A. Brunswick's consolidated summary figures.

Q. And the depreciation, the origin of that line?

A. Brunswick's consolidated summary figures.

Q. And cash flow?

A. The addition of the two items.

Q. When you say the two items, what items are you referring to?

A. Profit, loss and depreciation. The only year where they don't balance, we took it from Brunswick's figures—for some reason in 1965 their two figures didn't balance. So we put in here exactly what we found in the Brunswick figures.

Q. Then, when you get to the next one, you have individual needs, $2,000 per lane, tenpin lanes

[721]

only.

A. Yes.

Q. Does that represent your calculation?

A. Yes, that is our calculation from Exhibit 1. Exhibit 1, on the bottom, in which we have cash needs for the individual proprietors of $2,000 per lane per year, to make his or their equipment payments to Brunswick. All that we did on this chart was to multiply that $2,000 by the number of tenpin lanes that Brunswick was operating that year.

As an example, in 1966, they had 4,411 tenpin lanes. If you multiply that by 2,000 per lane, you have our figure of $8,822,000.

[722]

Q. And then you finally have an excess or deficiency line. What is that?

A. Well, if the number is in parenthesis it—means the individual proprietors would have needed that much more amount to make their equipment payments to Brunswick. Or, to put it differently, the proprietor in 1965 would have been short $2,681,000 to make his payments to Brunswick.

In 1966 they would have been short $7,836,000.

Q. Finally, there is a footnote 1, which applies to the years 1971 and 1972, which I noted on the line where the phrase, "Individual needs, $2,000 per lane," is found.

A. Yes.

Q. Would you explain that footnote?

A. Yes, sir. Exhibit 1 reflects the fact that the lanes are paid for in five years and the pinsetters in eight years. Consequently, during 1971 and 1972, we had reduced the obligation of the individual proprietors, since we assume in the five years the lanes have been paid for in full. Consequently, $2,000 per lane from the first five years has been reduced for the next two years to $1,177 per lane, reflecting only the amount due on the pinsetters.

Mr. Hoffmann: I offer plaintiff's Exhibit

[723]

50 into evidence, your Honor.

The Court: Objection?

Mr. Seeley: The same objection that I made before, your Honor. And I would like to observe what the effect here is, the fact that the caption shows Brunswick's cash flow compared to cash needs of individual proprietors, two different things.

As I studied this, it seems to me that what the individual proprietors have done during this period, 1965 to 1972, is pay off practically the entire cost of brand new Brunswick pinsetters and lanes, the cost of which for 5,000 lanes I figure is something like $75,000,000.

I object to its admission.

Mr. Hoffmann: Your Honor, it is another application of what——

The Court: Also longevity, too, I would think.

Mr. Seeley: Sir?

The Court: Also longevity, too, as far as the age of the lanes——

Mr. Seeley: Brand new——

The Court: Giving them a life time—let me call it that—of eight years and five

[724]

years, respectively.

Mr. Hoffmann: Your Honor, the footnote makes allowance for the number of years that have elapsed.

The Court: I know. Not the number of years that have elapsed. After the fifth year they have given them—they have stopped payment on what, Mr. Lieblich?

The Witness: On the lanes, sir.

The Court: On the lanes, right.

Into evidence.

Cross-examination, I think, has to do with the weight of this exhibit.

P-50 into evidence, over the objection of Mr. Seeley. He will have his opportunity on cross-examination to interrogate this witness.

(Exhibit P-50 received in evidence.)

Mr. Hoffmann: Just a few more questions about the exhibit itself. Is it all right for me to circulate this, your Honor?

The Court: Yes.

(Handed to the jurors.)

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, would you take us down the line for 1965 quickly and tell us, first, what is

[725]

the object, what is it that this exhibit is doing?

The Court: Referring to?

Mr. Hoffmann: Referring to plaintiff's Exhibit 50 in evidence.

A. To show the great advantage that Brunswick has over the independent proprietors in the operation of these centers. Brunswick doesn't have to pay any money to itself for its equipment and the independent proprietors would have to pay $2,000 each year to Brunswick for the equipment obligation.

Q. Now, as you go down 1965, you find a cash flow figure for Brunswick, is that right?

A. Yes.

Q. And that is in parenthesis, is it not?

A. Yes.

Q. That parenthesis means what?

A. A loss. There was a cash deficit during Brunswick's first start-up year, 1965, of $2,681,000.

Q. Was 1965 any special year in the history of Brunswick's bowling operations, do you know?

A. Yes, that's when they first began their BCOD Division.

The Court: Let me interrupt a minute, Mr. Hoffmann, while it is on my mind.

Mr. Lieblich, you say that Brunswick, of

[726]

course, didn't pay themselves. What about the capital outlay of Brunswick when they made all of this equipment? They had to pay workers, they had to pay insurance, and everything else, did they not; build buildings, build machines, pay for patents, et cetera, whatever they do. Is that considered in this?

The Witness: Certainly, Brunswick did have some cost, sir. No question about that. The amount that the proprietors often paid as down payments, in some cases, equaled almost the entire cost that Brunswick had for the pinsetters. So there would have been some remaining cost, yes.

I am trying to answer, as best I can. As an example, sir——

Mr. Hoffmann: Excuse me. I didn't mean to cut your answer off.

The Court: Well, that answers it. I wanted to ask it while I was thinking of it.

Yes, Mr. Hoffmann.

By Mr. Hoffmann:

Q. Further along the line that the Judge's question suggests, do you see the line for profit and loss under 1965 of $2,171,000?

[727]

A. Yes.

Q. Where does that figure come from?

A. From Brunswick's consolidated summary sheets.

Q. And does Brunswick's consolidated summary sheet show that as a loss?

A. Yes.

Q. So that the loss figure of $2,171,000 is not something that you figured out for yourself, but something that Brunswick figured out, is that right?

A. It is their figure, sir, not our figure.

Q. So whatever basis of accounting they might have for loss, this is what they called their own loss, isn't that so?

A. Their figures, sir.

Q. Now, when you come down to the bottom, you don't, I notice, in '65, have any comparison between the individual proprietors' needs for that year and the Brunswick cash flow. Would you explain that to us again, please.

A. Yes, sir; it was the start-up year for Brunswick. It wasn't a full year. So we didn't seek to make any comparison.

Q. But in 1966, you did that?

A. Yes.

Q. And you have in 1966, near the bottom, an

[728]

entry of Brunswick's cash flow of $986,000, is that correct?

A. Yes.

Q. Does that mean that cash flowing into Brunswick exceeded its operating needs by that amount?

A. That means, sir, that after taking all the money and paying all their bills Brunswick had a cash surplus in their BCO of $986,000.

[729]

Q. Now, you have a figure of eight million, eight hundred twenty-two and three zeroes, $8,822,000, as individual needs per ten pin lane in 1966.

What is that?

A. That's the total amount that the individual proprietors would have needed to pay Brunswick equipment obligations based on $2,000 per lane.

Q. And that $2,000, of course, is that which you have on Plaintiff's Exhibit 1?

A. Yes.

Q. Then on the bottom of '66 you have a figure in parentheses of $7,836,000.

Is that a deficiency, is that what the parentheses mean?

A. It means that proprietors in 1966 in operating these centers would have been short $7,836,000 to pay their debts to Brunswick for the lanes and pinsetters.

Q. And running along that line, sir, what does the next deficiency figure of $8,417,000 for 1967 reflect?

A. In 1967 the proprietors would have been short $8,417,000 to make their payments to Brunswick on the lanes and pinsetters.

Q. In the same way the next figure would be for 1969, it would be $6,846,000, for 1970 $5,639,000 short; is that what you are saying here?

[730]

A. Yes.

Q. In 1971, I notice that this bottom line figure for the first time becomes positive; is that right?

A. Yes.

Q. Do you have any explanation for that?

A. Yes.

Q. What is it?

A. Our chart reflects that the lanes had been paid for in the first five years; consequently, the proprietors' debt needs would have dropped after that.

Q. Now, sir, in 1972 you show a $2,024,000 excess, to use the word on the last line, excess or deficiency.

This is excess, is it not?

A. Yes.

Q. And do you have a reason for that?

A. Yes. The Brunswick operations made a lot more money in 1972 than they did in 1971, by almost a million and a half dollars.

Q. And does this "a lot more money" you referred to reflect some change in bowling center operations?

A. Well, during the last few years the country has witnessed a rather dramatic turnaround in the bowling industry, after the serious decline through 1969, beginning in 1970 we began to see an upturn, and every year since

[731]

then the upturn has been increasing.

Q. Do you have any opinion, Mr. Lieblich, as to why this upturn has taken place?

A. Yes.

Q. What is that opinion?

A. Well, several reasons account for it.

I think the primary reason is, there has been an increase in the population of our country, particularly of an age which we consider are our bowling age.

Now, at the same time—not just our company, but the entire industry, including AMF, including Brunswick, worked together to try to create more interest in bowling in general.

During the years we have participated in school programs, teaching youngsters in school to bowl.

Those youngsters are now six or eight years older than when we began teaching them. They are now coming into our centers to bowl and to pay for it.

We continued our efforts with ladies. In many of our centers we are rather full now in the morning with daytime leagues of ladies.

All these factors together—another factor, there has been—there have been a few centers have gone out of business in the last six or eight years, and as they have been abandoned or shut down there is a little less

[732]

competition.

So we are all seeing now better results in bowling than we saw in the terrible days of the '60's.

• • •

[737]

Q. Mr. Lieblich, addressing yourself to Pueblo—

The Court: I didn't hear you, Mr. Hoffmann.

Mr. Hoffmann: I asked the witness to address himself to Pueblo, the situation in Pueblo, Colorado.

Q. You opened in what year?
A. In August or September of 1960.

Q. And did there come a time when there was a dispute with Brunswick concerning the Pueblo operation soon thereafter?

A. Yes.

Q. When was that?

A. It culminated—came to a head in February, February of 1962.

Q. What was the dispute about, sir?

A. Their misrepresentation in the inducement of the original contract for the sale of equipment in having us make our investment in Pueblo in 1960.

Q. And was that dispute with Brunswick settled between the parties?

A. Yes, it was.

[738]

Q. What was the settlement, what form did it take?

A. They gave us credit of somewhere approximating $50,000, mainly a waiver of interest charges, they cancelled some other unpaid obligations, and then rewrote the Pueblo contract for over another period of time.

Mr. Hoffmann: Miss Costello, would you kindly mark as Plaintiff's Exhibit 51 for identification a document entitled General Release, three pages long, and citing that it was made on the 30th day of July 1963.

(Exhibit P-51 marked for identification.)

Q. Mr. Lieblich, I show you P-51 for identification. Is that the document to which you referred in your testimony just now?

A. Yes, this is the release that was executed by me as president of Pueblo Bowl-O-Mat after the matter was settled with Brunswick in July of 1963.

Q. Are you making any claim in this present lawsuit with respect to the subject matter of that dispute which was settled by the release?

A. No, sir.

Q. You are not claiming any money for that subject?

A. No, sir.

[739]

Mr. Hoffmann: I offer P51 into evidence.

Mr. Seeley: No objection.

The Court: Into evidence, 51.

(Exhibit P-51 received and marked in evidence.)

Q. Now, Mr. Lieblich, coming—

Mr. Seeley: Are you going to another subject now?

Mr. Hoffmann: No, sir; I am at Pueblo. I propose to stay with Pueblo for a while.

Mr. Seeley: The episode which terminated in the release, are you finished with that?

Mr. Hoffmann: Yes, I think it will be apparent by my next question.

Mr. Seeley: I would like to go to the side bar when you are quite finished.

The Court: All right.

(Whereupon the following proceedings were had at side bar, outside the hearing of the jury:)

The Court: Yes, Mr. Seeley.

Mr. Seeley: The defendant now moves to strike the testimony previously received as to the allegedly

misleading market survey furnished by Brunswick to the plaintiff, Pueblo Bowl-O-Mat, in 1960, on the ground that it now fairly appears that that was the subject matter of a former dispute

[740]

completely settled among the parties and has no relevant place in the record of this case.

Mr. Hoffmann: Your Honor, there is not a single word in the release which imposes any silence on Mr. Lieblich. The dispute was over money, with damages resulting from the so-called misrepresentations. That dispute certainly was settled and the money was paid over.

There isn't anything in the release, unless Mr. Seeley knows something there that I don't know, which in any way relates to the circumstances not being referred to in other litigation, or which seals the facts upon which the dispute was founded.

The facts are relevant to the issues in this case. When one gets a release, one gets released from certain claims. Those claims involved in this release were money claims, and they were released, as the witness said, by the signatures on this document and by the payment of what he called some $50,000.

Now, beyond that, the release does not speak, your Honor. And I submit its existence or nonexistence is totally irrelevant to the use of the facts which underlay the dispute, to the extent that those facts are relevant to the lawsuit.

[741]

The Court: If I understand Mr. Seeley's argument, he doesn't question what you say. What he is

asking to be stricken was the statement by this witness that there was misrepresentation by this defendant in the negotiations leading up to the creation and construction—if there was construction—of the center at Pueblo.

Right or wrong?

Mr. Seeley: Right.

The Court: Why should this jury be permitted to even consider anything that went on in '60 or '62, because it has all been settled. The consideration was approximately $50,000. Is that your argument?

Mr. Seeley: Yes. And then, after that, I can't see what in the world it has to do with the charge that in later years Brunswick tried to monopolize the bowling center business.

Mr. Hoffmann: Your Honor, Mr. Seeley introduced this release in this lawsuit. He referred to it in his opening statement. He apparently is going to rely on it in his defense. And all I am saying is that there isn't a thing that was released between the parties that has anything to do with proving issues in this lawsuit. If there

[742]

were misrepresentations in Pueblo, if centers were induced to overbuild in Pueblo, that is a fact which can or cannot be relevant to the case. That depends upon your Honor's ruling as to the main issues in the case. But that fact is not made irrelevant by force of the presence of the release. The release only shows—goes to whether or not Mr. Lieblich could collect money from—

The Court: What about the testimony previous to the introduction into evidence of that release, that there was misrepresentation? I think this is the crux of your argument.

Mr. Seeley: Yes.

Mr. Hoffmann: Your Honor, maybe I haven't made myself as clear as I should. What I am saying to you is that whether or not the release exists—assume, for the moment, no release—if there were no release, the question as to misrepresentation, as to overbuilding in Pueblo, is a question which goes to the central issues of the case. Either it is relevant to those issues or it is not.

The Court: As to misrepresentation during that period, why is that relevant to any issue in this case?

[743]

Mr. Hoffmann: Because we have shown that there was overbuilding in Pueblo through Brunswick's desire to move its equipment out to the bowling centers in that period. And the result was that they were hurt—all of the operators were hurt in that area, and as a result of that Brunswick, until 1965, was able to pick up Belmont center.

Our damages in Pueblo are damages which we say result from Brunswick's activities not only in picking up Belmont in '65, but its other activities, which we say restrain the trade of the competitors in that area.

We don't claim damages—if it weren't for the release, we won't claim damages for an earlier date than the release. We don't claim damages for an earlier date, but we do claim damages—

The Court: From '62 on.

Mr. Hoffmann: —subsequent to the release itself.

If you pull out the misrepresentation, it seems to me those issues relating to it, then you are pulling out what I believe is part of the main case, and not part of some side dispute that was settled by the release.

And, if your Honor please, at the very least

[744]

I would ask you to hold your decision until all the evidence is in. He is making a motion simply based on the release in the middle of the plaintiff's case.

We have more evidence, and we will put on Kenny concerning Pueblo. We have more evidence going in resulting from—different witnesses—relating to all the centers.

To isolate the release at this point in time seems to me serves no good purpose and may foreclose us from a valuable thread in this tapestry of antitrust damages.

The Court: Anything else?

Mr. Seeley: Only that I don't think this should be confused with the issue of building. Maybe Brunswick did or did not sell too many machines in Pueblo. But I think this question of the alleged misrepresentation can be totally disconnected from that.

The Court: My ruling is as follows: I think this jury is entitled to know at this stage of the proceedings the totality of the circumstances leading up to the opening and this construction of Pueblo, whether or not there is a misrepresentation, the execution of the release, and then what

[745]

followed.

I overrule your objection.

Mr. Hoffmann: Thank you, your Honor.

(Court and counsel withdrew from side bar.)

Mr. Hoffmann: Will the reporter read the last question and answer.

(Record read.)

[746]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

Mr. Hoffmann: Your Honor, can we ask the Reporter to read the last question and answer from before the side bar conference?

The Court: Yes.

(The following questions and answers were read by the Court Reporter:)

"Question: Are you making any claim in this present law suit with respect to the subject matter of that dispute which was settled by the release?

"Answer: No, sir.

"Question: You are not claiming any money for that subject?

"Answer: No, sir."

Q. Now, Mr. Lieblich, in connection with Pueblo, what is the claim for damages?

Pueblo is a plaintiff here, is it not?

A. Yes.

Q. What is that claim?

A. A figure between $965,000 and $1,100,000.

[747]

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Q. Mr. Lieblich, your bowling center in Pueblo you claim in this action has been injured; is that right?

A. Yes.

Q. What is the basis for your claim; what is the injury which you say results in damages?

A. Yes. The basis for the claim is first the discriminatory treatment that Brunswick afforded to Belmont Lanes from September 1963 until April of 1965,

[748]

and then Brunswick's opening—not opening, Brunswick then taking over Belmont Lanes and operating it directly competitively to our center in Pueblo.

The Court: When?

The Witness: From April 1965 right to the present, sir. They are still operating it.

Q. Do you have any way of calculating the injury done to you during the period of time in which you say you were injured through discrimination or something of that sort?

Is that what you just said?

A. Yes, I do.

Q. What is your basis for calculation?

A. Well, it is my general knowledge and experience in the bowling business as to what happens when a bowling center shuts down.

If Belmont Lanes had been closed down by Brunswick on September 1, 1963, a certain amount of bowling revenues that Belmont is still receiving would have come into our center.

I can elaborate on that.

• • •

[779]

By Mr. Hoffmann:

Q. Mr. Lieblich, I would like to show you Plaintiff's Exhibit 47 in evidence. Can you find an entry there for Belmont Lanes? I believe it is on the second page?

A. Yes, sir; on page 4, Center No. 218 is Belmont Lanes in Pueblo, Colorado.

Q. What does that line show? You testified about it, of course, when the exhibit was put into evidence.

A. Yes.

Q. But, briefly, what does it show, sir?

A. It shows that in 1965, while Brunswick was operating Belmont Lanes, it lost $25,789. In 1966 it lost $4,241. In 1967 it had a profit of $1,264. In 1968 it lost $20,075. In 1969 it lost $21,820. In 1970 it lost $20,213. In 1971 it had a profit of $6,328. And in 1972 it had a profit of $18,253.

Q. Now, sir, we have in evidence Plaintiff's Exhibit 8. You are going to have to look at that.

A. Yes.

[780]

Q. What does Plaintiff's Exhibit 8 purport to show?

A. The profit or loss of Pueblo Bowl-O-Mat during each of the years of its operation from 1961 through 1972.

Mr. Hoffmann: Your Honor, I would like to show an enlargement of Plaintiff's Exhibit 8 on our board here. Plaintiff's Exhibit 8 is an exhibit in evidence.

The Court: Yes.

(Plaintiff's Exhibit 8 exposed on board.)

Q. Mr. Lieblich, would you be good enough to state what Plaintiff's Exhibit 8 shows here?

A. Yes. It is the profit or loss of Pueblo Bowl-O-Mat —excuse me. Not profit, it is the losses sustained by Pueblo Bowl-O-Mat in each year of its operation from 1961 through 1972.

Q. And is that loss reflected in the last line on the exhibit?

A. Yes, sir; it is, in the parentheses. Parentheses means a loss.

Q. And is it a fact that in no year was there any operating income, is that what the last line also means?

A. That's right, sir. It lost money every year of its operations right through 1972.

[781]

Mr. Hoffmann: Will you kindly mark as Plaintiff's Exhibit 52 for identification a sheet titled Net Income or Loss of Four Plaintiff Companies.

(Exhibit P-52 marked for identification.)

Q. Mr. Lieblich, looking at Plaintiff's 51 for identification, can you tell us what it is?

A. Yes. This is a summary from four exhibits already in evidence.

Q. Pardon me. I am so sorry. It's Plaintiff's 52 for identification. I am sorry to interrupt you. Will you start your answer over again, please?

The Court: Referring to Exhibit 52, Mr. Hoffmann was asking what it is.

The Witness: Yes, sir. I had begun the answer.

The Court: Read it, please.

(Incomplete answer read.)

A. (Continuing.)—including P-8, of the profits or losses sustained by our subsidiary plaintiff companies—Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat—from 1961 right through the present.

Q. Looking in the column entitled "Pueblo" there is a double line after 1963, is that right?

A. Yes.

[782]

Q. What does that line indicate?

A. That's when the losses that we claim now in this lawsuit commenced in Pueblo.

Q. In other words, as to the previous years above that you are making no claim, is that your testimony?

A. That's right.

The Court: What years are they?

The Witness: 1961, 1962 and 1963, sir. We make no claim for damages in those years.

The Court: All right.

Mr. Seeley: Side bar, please.

The Court: Yes.

[783]

(Whereupon the following proceedings were had at side bar, outside the hearing of the jury:)

Mr. Seeley: It now appears that the plaintiff is claiming damages not only for the period during which BCO-operated houses competed with its houses—

The Court: Say that again. Repeat it.

(Record read.)

Mr. Seeley: —but also for periods prior to 1965 when BCO, or Brunswick, operated no bowling centers, and when the claimed cause of damage is the fact that Brunswick, as a distributor and manufacturer of bowling equipment, either sold bowling equipment which enabled someone else to go into business in these places, or, having previously sold it, failed to foreclose on it and thus allowed those people to stay in business.

The basis of our objection is that there is no legal theory on which it can be charged that Brunswick monopolized the bowling center business at times when it was not even in that business.

The Court: Before we go any further, is the Court right in assuming that—I am now referring to P-52—the lines under Holiday '64, the lines under Paradise 1962, the lines under the item in

[784]

Paramus in 1964—he has already testified the lines under Pueblo 1963—no claim for damages in those years?

Mr. Hoffmann: Above those, yes.

The Court: No claim for damages for those years.

Mr. Seeley: Add one more—

Mr. Hoffmann: It is also true, however, as Mr. Seeley suggests, that when we come to this line (indicating)—

The Court: 1964. 1965?

Mr. Hoffmann: Yes. This includes the year 1964.

The Court: That's right. Excuse me. 1964, as far as Holiday is concerned, and Paradise.

Mr. Hoffmann: Yes. I'm sorry. I was thinking of Pueblo.

In respect of Pueblo, there is $40,967 in this year '64. And unless my memory has done me in, I believe that Belmont was not until '65.

The Court: Acquisition did not take place until 1965.

Mr. Seeley: April 1965.

The Court: That is what you are objecting to.

Mr. Seeley: I am objecting to everything

[785]

before then.

Mr. Hoffmann: That is the area, then, it seems to me, that has to do with—Mr. Seeley, I trust we agree—this $40,967 for that year, 1964, is that right?

Mr. Seeley: Among other things.

Mr. Hoffmann: In respect to Pueblo.

Mr. Seeley: Yes.

Mr. Hoffmann: I submit, with great respect, that this argument suggests another aspect of the argument which took place at the side bar earlier.

Mr. Seeley: I'm not arguing; making an objection.

Mr. Hoffmann: Then I see no reason to go further.

The Court: He is asking that a continual objection be reserved on the record.

Mr. Seeley: I would like to amplify my objection a little bit. Paradise is in Puerto Rico. Brunswick has never been, or never tried to be in the bowling center business in Puerto Rico. And I submit that it is a legal impossibility for a company to monopolize the bowling center business in a place where it has never been in that business.

Mr. Hoffmann: Your Honor, I think we are really arguing objections at the wrong time. And

[786]

I will make myself as concise as possible.

First, I submit, as to the Pueblo figure, that has already been disposed of by your Honor's prior ruling earlier today at side bar.

As to the matter of San Juan, Paradise, the pleading makes it very plain, and the testimony thus far makes it very plain that the basis for our claim is favoritism which was displayed——

The Court: Extension of credit, et cetera.

Mr. Hoffmann: —extension of credit which was given to Star, our competitor, and withheld from us, and that this was part of an exercise of Brunswick's manipulative fianancial power.

It was not only true, by the way, of Paradise. We had some testimony describing Fort Lauderdale yesterday.

The integrated position of Brunswick, as both a supplier of the necessary equipment for the centers and the financier who extends credit, or withholds credit as it sees fit, enables it to control the presence or absence of competition in the market.

The San Juan story is one in which Brunswick never actually took over Star, but nonetheless we have made it part of our case, because over all the

[787]

years we lost money through this monopoly integrated supplier competitor denying us credit and keeping alive this center, which was ultimately described by Mr. Lieblich in his testimony as being a center in a most filthy—I think was his word—condition. And as to this we say—well, this is essentially a part of our theory, that it isn't actually necessary for Brunswick to have its presence with both feet on the ground there.

Its presence was felt through what it gave in credit.

The Court: All right. Your objection will be noted, Mr. Seeley.

Mr. Seeley: And they will stand.

The Court: Yes.

(The Court and counsel withdrew from side bar.)

Mr. Hoffmann: May we have the reporter read the last question and answer, please?

The Court: Yes.

(Record read.)

[788]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Record read.)

Q. Now, would you be good enough to look——

A. Sir?

Q. Would you be good enough to look, Mr. Lieblich, at the other columns.

There are double lines in those columns?

A. Yes.

Q. Going from left to right, after 1964 on Holiday——

A. Yes.

Q. A double line under the figure there for 38,499.

What is the meaning of the double line there?

A. Our damages, our claimed damages for Holiday Bowl-O-Mat commenced the year following the double lines. Dutchess Lanes was taken over and was operated by Brunswick Corporation.

Q. And in the next column, under Paradise, 1962, there is a double line after the entry for that year.

And the meaning of that double line?

[789]

A. Our damages—our claimed damages for Paradise Bowl-O-Mat commenced as of September 1, 1962.

Q. And in Paramus there is a double line after 1964; is that right?

A. Yes.

Q. And the meaning of that?

A. That's intended to be the starting point of damages when Brunswick began to operate several centers, Fair Lawn Lanes and Interstate Lanes in Ramsey.

Q. And the figures given above the double lines that you have just testified about are not claimed as damages; is that right?

A. No, sir.

Q. Now, if you go back to Holiday, there are double lines in the bottom of the page, after 1969?

A. Yes.

Q. What is the meaning of that?

A. Because that's the year when our damages in our judgment terminated, because that's when Dutchess Lanes was shut down by Brunswick. We don't claim damages for Holiday after August 31, 1969.

Q. And then double lines under the entry for 1970 in Paradise?

A. Yes.

Q. San Juan?

[790]

A. Yes.

Q. What is the meaning of that?

A. We don't claim damages in Paradise after September 1, 1970——

Q. And in Paramus and Pueblo there are no double lines on the bottom; is that right?

A. Yes.

Mr. Hoffmann: I now offer 52 in evidence.

Mr. Seeley: Objection on the grounds stated.

The Court: Into evidence, over the objection of Mr. Seeley, P-52 into evidence.

(Exhibit P-52 received and marked in evidence.)

Mr. Hoffmann: Your Honor, may I distribute it? There will just be a brief inquiry.

The Court: Yes.

Mr. Hoffmann: Thank you.

Q. Mr. Lieblich, addressing yourself to the last column, Pueblo——

A. Yes.

Q. —you have indicated according to your testimony the time period in which you claim damages for Pueblo; is that right?

A. Yes.

[791]

Q. And where does that start again?

A. August 1, 1963.

Q. Why that date?

A. We had signed a release to Brunswick through July 31, 1973.

The Court: '63.

The Witness: '63, excuse me.

Q. And it includes, does it not, the year 1964?

A. Yes, it does.

Q. And the entry for 1964 is what?

A. We lost in that year, in Pueblo, $40,967.

Q. When, if you know, when did Brunswick acquire Belmont?

A. In April 1965.

Q. Your damages, then, as a claim then, do not start with the acquisition of Belmont; is that right?

A. No, sir, it is a year and a half prior to that.

Q. For what reasons are you claiming damages for that year and a half prior to the Belmont acquisition?

A. Because of the discrimination given to Belmont Lanes in that they paid virtually nothing at all to Brunswick all during that period of time.

The total sum they paid was $2,300 in the three-year period through 1965.

[792]

Q. When you say, "paid," you mean paid to Brunswick; is that what you mean?

A. Yes, against their equipment obligations.

Q. Do you know from your memory what Pueblo Bowl-O-Mat paid during that period of time?

A. I can ascertain it. Not from memory—it was very significant payments.

Of course, ultimately the total debt was paid in full.

Q. And that total debt was what?

A. $500,000.

Q. Your figures after they go, after the point in time when Brunswick acquired Belmont, what is the reason for your claim of damage following that acquisition?

A. Well, Brunswick was keeping alive the center which we think should not be in business—should not have been.

Q. Do you have any way of computing what it would have meant to you if in April of 1965 the center called Belmont in Pueblo, Colorado, had closed down?

A. Yes.

Q. Can you tell us what that way is, that method?

A. Yes. Pueblo, Colorado, the community of Pueblo,

[793]

is a single bowling market.

There is in that community only five centers. There is our center, with its 40 lanes; there is the Belmont center with 24 lanes; there is Bowlero with its 32 lanes; Park Lanes with its 10 lanes; and there is Payne's Lanes with its 12 lanes.

Now, people are going to continue to bowl in Pueblo, Colorado, so that if Belmont were to have been shut down something would have happened to all of the bowling income that was being received by Belmont.

Now, I think that through my knowledge of the market area, having been to the other centers, knowing facilities that they had to offer, knowing the facilities that we have to offer in our center, I think I can fairly say that if Belmont had closed down, two thirds of all of the bowling income in Belmont would have come in to our center.

The choice of bowlers was very, very limited. Park Lanes with its 10 lanes was an old center downtown.

True, I said the other day, when I was there last month, they had modernized it, but it still doesn't make it by any sense a modern center.

There is no parking. I have to walk almost a block to visit the center.

And it wasn't during the evening when big play

[794]

was in existence.

Knowing the present schedule, I don't think that they could take too many additional leagues there.

Now, Payne's Lanes with its 12 lanes is certainly a very unattractive center.

The bowlers who have been in Belmont are accustomed to a very fine, first class bowling center. I don't

think they'd be happy to bowl in Payne's Lanes or in Park Lanes, as I have said.

The third center which would share some business with us would be Bowlero.

Now, Bowlero, although a nicer center than either Payne's Lanes or Park Lanes, has many limitations.

It has its—it is downstairs in a shopping center.

There are some very fine downstairs shopping center locations. We feel ours in Paramus is a first-class one.

But nonetheless, the one in Pueblo, Bowlero, is not an attractive center. It has many, many columns.

The snack bar is built very disadvantageously, if I can use that word, with respect to the bowling.

It is a very cramped and very crowded facility.

They have a nice cocktail lounge, but I don't think people who come there to bowl are going to come

[795]

there because they have a nice cocktail lounge. They are going to come there because the bowling facilities are attractive to them.

I realize also if Belmont was to close, some of the bowlers just wouldn't bowl. I recognize that as a possibility, but taking all those factors into consideration it would be my opinion that approximately two-thirds of the bowling down in Belmont would come into our center.

[796]

The Court: You testified as to Park Lanes, Payne's and Bowlero, you testified there were five lanes?

The Witness: Yes.

The Court: Oh, and yours and Belmont?

The Witness: Yes.

Your Honor, I say that I think two-thirds of the bowling revenues at Belmont would have come to our center all during these years.

Now, I have in front of me the Brunswick figures on their operation of Belmont Lanes for the year that just ended. And during the year that ended on December 31, 1972, just three months ago, their total bowling revenues came to $132,000. That was the total—I'm not including shoe rentals, I'm not including their pro shop or the cocktail lounge, just the pure bowling itself.

$131,988 of bowling revenue, so I will round it out to $132,000.

It is, therefore, my judgment that if Belmont were to close or had to close, now, it is a matter of judgment so I can't say specifically, but if Belmont were to close, our Pueblo Bowl-O-Mat would increase its bowling revenues in an amount between $90,000 and $100,000 each year.

[797]

Q. Can you from your experience, Mr. Lieblich, tell us when a bowling center closes down, do its patrons normally continue to bowl, patronize other centers?

A. Yes.

Q. Has your calculations which you have just given us made any allowance for possible loss of bowlers who would cease bowling altogether?

A. Yes.

Q. In what way?

A. Well, of the $132,000, I think that maybe $10,000 of it would stop bowling.

I think some bowlers would stop bowling because, although it is only 15 minutes away from Belmont to our

center, perhaps they live right next to it and they just don't want to drive for 15 minutes. These are possibilities.

Perhaps some of the bowlers would want to bowl Thursday night at 6:30, and they couldn't find that time.

So it is these factors that I have taken into consideration when I say that we—some of the bowlers would stop bowling.

Q. You have taken off something from the top for that; is that right?

[798]

A. Yes.

Q. What was it you took off?

A. I'd say about $10,000.

Q. To put that another way around, are you suggesting that it is a little less than 10 percent that would give up bowling because the center closed down?

A. Yes, I think that's—that's a fair statement, yes.

Q. Now, Mr. Lieblich, can you from your memory total or from any information you have in front of you, total the number of lanes that could survive—I'm sorry, the number of lanes that existed in Pueblo after the point in time, April 1965, when you say that Belmont should have closed down?

A. Including Belmont and our center and Bowlero and Payne's Lanes and Park Lanes, that would be a total of 118 lanes.

Q. Now, you are including within the figure the Belmont figure?

A. Yes, 24 lanes.

Q. Did you subtract 24—did you have 118 as your grand total?

A. Yes.

Q. So you'd have left 94 lanes; is that right?

A. Yes.

[799]

Q. Are you looking at some piece of paper when you say this?

A. I just put them down to——

Q. I see.

Now, of those 94 lanes which remain, how many again are represented by Pueblo Bowl-O-Mat?

A. 40.

Q. That's somewhat less than half, is it not?

A. Yes.

Q. Now, in relation to the amount of money which you think would flow to Bowl-O-Mat, Pueblo, on a close-down of Belmont, you didn't divide equally the money among the various surviving centers, did you?

A. No. I gave the reasons why I did not.

Q. Those were the reasons given earlier?

A. Yes.

Q. The condition of the lanes; is that primary——

A. Yes. We have in Pueblo, as I said, when I described it, one of the most beautiful bowling centers in the country.

The Court: You're telling this jury in the event Belmont was closed down in 1965, that two out of three bowlers would go to your

[800]

40 lanes even though that is less than half of the available lanes in the City of Pueblo?

The Witness: Yes.

The Court: Based on your judgment?

The Witness: Yes.

• • •

[801]

Q. Now, Mr. Lieblich, just before the luncheon recess, in answer to a question by the Judge, you indicated that two out of three of the bowlers, if the Belmont were to have closed in April '65, would have come to Pueblo Bowl-O-Mat, is that correct?

A. Yes.

Q. On what was that conclusion of yours based?

A. Well, on various factors. Certainly a general knowledge of what happens when a center closes down. And there is a technical aspect involved. I gave certain reasons why I did not think that the bowlers would want to come into Park Lanes or Payne's Lanes, because of their being older centers with very limited parking. So there is a technical reason, too, from a bowling standpoint. Those lanes were ten lanes and twelve lanes.

A good many of the leagues in our center in Pueblo,

[802]

as well as in Belmont Lanes, are what we call more than 12-team leagues. Consequently, if there is a group, if there is a league which has 14 or 16 teams, or however many it may have, if it is more than 10 or 12, even if they wanted to, they couldn't switch to Payne's or Park Lanes, because they couldn't accommodate them.

So that is a technical reason. But it is based generally on my knowledge of what can happen and what has happened in some communities where centers have been shut down.

Q. Coming back to the technical reason, you say that these centers couldn't accommodate them. Why is that so?

A. Well, it was a 14-team league. It means that they need 14 lanes to bowl at the same time. And if Park Lanes only has ten lanes, they just can't accommodate a league that size. That is one of the advantages of having a larger size center, such as we have in Pueblo.

Q. In relation to the other reason, you say that is experience?

A. Yes, sir.

Q. What was that experience on which you found that conclusion?

A. In addition to just a general feeling of the market, we have had the experience in both Puerto Rico and in

[803]

Holiday—Wappingers Falls area—as to what happens when another center shuts down.

Q. Addressing yourself to Holiday, in the Wappingers Falls area, do you have any way of demonstrating to us what that experience was?

A. Yes, sir. When Dutchess Lanes finally shut down in Poughkeepsie, our Holiday Bowl-O-Mat incurred a loss in the year in which Dutchess shut down of $51,000.

During the year that just ended on August 31, our income—instead of a loss at the end of the year, we made $47,871. That is a difference of $98,000 since Dutchess closed. The year that is now under way, which is more than half completed, our figures reflect we will probably make about 60 or 65 thousand dollars this year. So since Dutchess closed down we have witnessed a swing of almost $120,000 in the profits of our Holiday Bowl-O-Mat.

Q. In the Wappingers Falls-Poughkeepsie area, there were other centers surviving the closedown of Dutchess, were there not?

A. Yes.

Q. How many were there?

A. There are still—Mardi-Bob is still there, and Hoe-Bow is still there, Touponce Lane is still there.

[804]

Q. Mr. Lieblich, do you have among your papers in the papers in your lap plaintiff's 9?

A. I am not sure which that is.

Q. That's the Pueblo Bowl-O-Mat exhibit.

The Court: What exhibit is it?

Mr. Hoffmann: 9.

A. Yes.

Q. Coming back to plaintiff's 9, does plaintiff's 9 have anything to do with your calculations of damages for Pueblo?

A. Yes, it is a basis for the calculation of the damages to the extent that the bottom shows that for each additional $1,000 of bowling revenue, net income would increase by $1109.

Q. That's the figure down here (indicating)?

A. Yes.

Q. And is that a figure which reflects the other activities of the center about which you earlier testified in this case?

A. Yes.

Q. These items here near the bottom of the chart?

A. Shoe rental, snack bar, the bar, the pro shop and the machine and miscellaneous revenues.

Q. Now, to demonstrate your claim for damages,

[805]

how did you use that bottom line figure of $1109?

A. Well, that means that for every additional $1,000 bowling revenue that would come into our center, the

center would make not that $1,000, but $1109, since we would also be receiving from these bowlers additional profits from shoe rentals, snack bar, bar, pro shop, cocktail lounge and machine and miscellaneous income.

Q. And is that included in your calculation for damages?

A. Yes.

Q. And what, again, do you have to go by to indicate the amount of revenue against which you would add $109?

A. Well, my judgment is that in Pueblo with Belmont Lanes shut down we would bring into our center between 90 to $100,000 of just bowling revenue.

Q. Is that for the reasons that you have already given today?

A. Yes.

Q. Anything more?

A. No, sir.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as plaintiff's 53 for identification a one-page document which is entitled,

[806]

"Damages to Four of Plaintiff's Centers."

For referencing, Holiday, Paradise, Paramus and Pueblo.

(Exhibit P-53 marked for identification.)

Q. Mr. Lieblich, P-53, do you have that?

A. Yes.

Q. What is it?

A. It is a listing of the damages we claim to four of the ten plaintiff companies, Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat.

Q. And addressing yourself to the line or section which refers to Pueblo, will you tell us how that was prepared?

A. Yes.

The first item down is additional annual bowling revenue. And I have put down the figure I have just testified to, that if Belmont were shut down, between 90 to $100,000 of additional bowling revenue would come into our Pueblo—

Q. Since it is not yet in evidence, please don't refer to the precise amounts, but tell us the structure.

There is a figure given under, "Additional Annual Bowling Revenues for Pueblo"?

[807]

A. Yes.

Q. What was the method used to apply that figure?

A. The testimony I have just given as to how much bowling revenue I thought would come into Pueblo if Belmont were shut down.

Q. And then, the next line, the heading, "Net Income per Thousand Bowling Revenue."

A. Yes.

Q. What did you do?

A. I multiplied whatever figure is down there by $1109, since each additional $1,000 of bowling revenues would give us $1109 of income.

Q. That is to accommodate the extra revenue that you describe on Exhibit 9 in evidence?

A. Yes.

Q. Now, then you have a matter of simple arithmetic; is that right?

A. Yes.

Multiplying 1109 by the figures that I have down in the first column, is a summary—is a total then in the third column.

Q. Then your next column reflects the total number of years, does it not?

A. Yes, it does, number of years in which we claim

[808]

damages to that plaintiff subsidiary.

Q. What is the basis for that entry?

A. Well, the testimony that I have given.

Q. Would it be the testimony found in connection with Exhibit 52?

A. Yes. It runs right through—

The Court: That's in evidence. He can't look at that.

Mr. Hoffmann: Sorry.

The Witness: Yes, it runs right through April 1 of 1973, which is next week.

[809]

Q. Then you have a total, do you not, under damages, at the end?

A. Yes.

Q. What does that reflect, the process used?

A. That reflects the amount that I thought would come into Pueblo if Belmont were shut down times 1109.

That's a total, multiplied by the number of years that Brunswick has been damaging our plaintiff company.

Q. Now, without going over the details again, would the same—I mean at this time—would the same method that you have just described in relation to Pueblo also apply to the other three centers found on this summary?

A. Yes. The first column is my judgment of the additional revenues that would come into those centers multiplied again by the figure on the exhibits, the net income per thousand dollars per year, multiplied by the number of years that Brunswick was damaging that plaintiff.

Q. And these find their support, do they not, in the testimony given in relation to 52 and the other exhibits?

A. Yes.

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[812]

Q. Mr. Lieblich, you have in your hands Plaintiff's

[813]

53?

A. Yes, I do.

Q. Would you be good enough now—

A. I can't hear you, sir.

Q. Would you be good enough to look at the top line, that's Holiday Bowl-O-Mat, is it not?

A. Yes.

Q. Now, again, without giving us the precise amount, would you tell us the basis for your entry concerning the additional annual bowling revenues for Holiday?

A. Yes. Well, in Holiday, based not only on my general knowledge of what should happen when a bowling center closes down, but the actual experience that we had reflected in Holiday since Dutchess closed down, I determined that I thought was appropriate additional bowling revenues that have come in to us since Dutchess did close, because Dutchess closed.

Q. Those are the sources for your entry as to the additional annual bowling revenues for Holiday?

A. Yes.

Q. And then for the net income per 1,000 bowling revenue?

A. That's from one of the exhibits, Mr. Hoffmann.

Q. Referring to this, without turning them over,

[814]

the one that applies the side income, bowling to shoe rental, snack bar, bar, pro shop, mach. and misc., which my colleague informs me, if I may say so, is Exhibit 11 in evidence——

The Court: Tell the jury what you mean by "mach." and "misc."

Mr. Hoffmann: Machinery and miscellaneous, mach. and misc.

[815]

Q. And then you did the arithmetic, is that not right?

A. Yes, in the same manner that it was done in Pueblo.

Q. That would give you a per year figure, is that it?

A. Yes, sir.

Q. Then the next column is number of years. Addressing yourself only to Holiday, that span of years, is that to be found on P-52 in evidence?

A. Yes, it is. That's the period of time that Dutchess was being operated by Brunswick. I ran it to the end of our fiscal year, since Dutchess closed down. So it was very late in the year, the bowling season was over, in any event.

Q. And with your other testimony in respect of Holiday, as found in connection with 52 apply here as well?

A. Yes, it does.

Q. And then the final column is damages, is it not?

A. Yes, it is.

Q. And is that just a matter of doing the arithmetic, involving the numbers that elsewhere appear on the line?

[816]

A. Yes, the same type of arithmetic which was done in Pueblo.

• • •

[817]

Q. And then the Paramus Bowl-O-Mat.

A. Yes.

Q. The first column, additional annual bowling revenue.

A. Yes. That figure is my judgment as to the additional revenues that would come into our Paramus center if one or several of the Brunswick centers

[818]

competing with us, such as Lodi Lanes, Tenpin on the Mall and Fair Lawn Lanes—were to be shut down.

Q. And the net income per thousand dollars bowling revenues?

A. That $1,140 figure is from an exhibit whose number I don't know.

Q. Exhibit 15?

(Exhibit 15 shown on board.)

A. Yes, sir; that $1,140 figure is on this intended exhibit.

Q. And then the arithmetic is done, according to your testimony, is that correct?

A. Yes, the third column is just arithmetic.

Q. And that gives you a per year figure, is that right?

A. Yes, it gives a range of damages within that year, per year.

Q. And the next column, the number of years?

A. That's the number of years that we claim that Paramus Bowl-O-Mat has been damaged by Brunwick's operation of competitive centers. They are still operating it, so we brought it right through to date.

Q. Is that based on your testimony as given in connection with plaintiff's Exhibit 52?

A. Yes, sir.

[819]

Q. Then, finally, the damages column.

A. That is just arithmetic.

Q. Just arithmetic of the entries that are elsewhere on the line, is that your testimony?

A. Yes, sir.

[820]

Mr. Hoffmann: Your Honor, I now offer the exhibit in its entirety.

The Court: 53, over the objection of defendant's counsel, into evidence.

The Court: In arriving at your projection of damages, in your opinion, in the calculating of Pueblo, one of your criteria was your experience in Holiday, Wappingers Falls?

The Witness: Yes, sir.

The Court: Also Puerto Rico?

The Witness: Yes, sir; that's a factor. Even without that, sir, I would come up with essentially the same numbers.

The Court: All right.

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[821]

Q. Now, Mr. Lieblich, coming back once more to Pueblo Bowl-O-Mat, that's the bottom, just before the summaries down to date.

A. Yes, sir.

Q. The figure is given for additional annual bowling revenue of 90 to 100 thousand dollars. Will you explain how you arrived at those particular figures?

A. Yes. Knowing that in the years just ended the Belmont Lanes enjoyed $132,000 of bowling income, the question then is what would happen to that $132,000 were Belmont out of business? And I have given the various reasons why I thought that the great bulk of that business would have to wind up in our Pueblo Bowl-O-Mat, for the reasons I explained about Park Lanes being only ten lanes, Payne's being only 12 lanes, Bowlero, although having 32 lanes, not being a first-class center, such as ours, my general feeling was that we would wind up with between 90 to 100 thousand dollars of additional bowling revenues were Belmont to be out of business.

Q. You could have picked other numbers, couldn't you; why not 5 to 200 thousand dollars?

A. Well, 200,000 would have been much too high and, in my judgment, 50 would have been much, much too low.

[822]

Q. For reasons given in your testimony today?

A. Yes.

Q. Now, you applied a multiple of $1,109 here, is that right?

A. Yes.

Q. Is this just multiplication?

A. Yes. If you multiply 90,000 by 1,109 that would be per year $99,810. If you multiply $100,000 by $1,109 that would be $110,900. So the range of damages per year should be between $99,810 and $110,900.

Q. And once again, that $1,109, is that a number that just comes out of the air somewhere; where did you get that?

A. Sir, that comes from one of the exhibits that is in evidence.

Q. I suggest that it is Plaintiff's 9. Do you have that in front of you?

A. Yes, it is 9.

Q. And that is what was designed to reflect shoe rental, snack bar, bar, and so on, that we have seen on other exhibits, as well, as that right?

A. That is correct.

Q. Having done that, you came out with the per year conclusions here.

A. Yse, sir; $99,810 to $110,900.

[823]

Q. And then what do you do here, on the number of years?

A. Well, the number of years which it is our contention that Brunswick has damaged us by discriminatory practices, and keeping Belmont open for a total period of nine and two-thirds years—they are still operating Belmont, to our damage.

Q. Now, sir, what is this final entry, figure of damages for Pueblo Bowl-O-Mat?

A. Well, if you multiply $99,810 by 9⅔ years, that would be——

Q. Pardon me. That's the 8/1/63 to——

A. Yes. Under that is 9⅔ years. If you multiply $99,810 by 9⅔ years it is a total of $964,830. If you multiply $110,000 by 9⅔ years——

Q. Excuse me, sir. You meant $110,900.

A. Yes. Multiply $110,900 by 9⅔ years, the total damages would be $1,073,030, a range of damages, then, between $964,830 to $1,072,030.

Q. Now, Mr. Lieblich, addressing yourself now to Holiday Bowl-O-Mat.

A. Yes.

Q. The top entry. Well, let me start this way. Holiday Bowl-O-Mat is a plaintiff in this proceeding, is it not?

[824]

A. Yes, it is.

Q. And you are the president of that company, are you?

A. I am, sir.

Q. And that is true of all of these companies, isn't that so, separate companies reflected in that chart?

A. Yes, Mr. Hoffmann.

Q. Now, sir, I ask you to tell us what happened on or about 12-10-65.

A. Brunswick took away Mrs. Levine's center, called Dutchess Lanes, in Poughkeepsie, and began to operate it themselves.

Q. What sort of a center was Mrs. Levine's?

A. Well, I think I described it yesterday or the day before. It had 26 lanes. It was in a free-standing building, but certainly was not as attractive as our center, nor as attractive as the Brunswick center in Belmont, Colorado, for example. It had a small snack bar, a very small cocktail lounge. I don't remember if it was carpeted or not. It was cramped in. The machine area in the back was very,

very crowded. It just wasn't up to our center in appearance.

Q. And can you tell us if you have any information about the kind of business that was being done

[825]

in Dutchess prior to its being taken over?

A. I think back in 1968 or '69, when they shut it down, it was doing about $105,000 a year in bowling revenue.

Q. Do you have any information concerning the annual revenue of Dutchess Lanes?

A. Yes. I may have been a little bit high in the 105. I think I have the documents here. (Producing papers.) Yes, I was a little high. They did $92,000 the year that ended in December of 1969.

Q. Is this a circumstance that in some way enters into your calculations as to damage?

A. Yes, plus the fact that our actual experience in the improvement of our revenue since they did shut down.

Q. And that actual experience since the shutdown, where is that reflected?

A. It is reflected in several places, sir. There is an exhibit—the number I don't know offhand—but it shows the bowling revenues in Holiday every year.

Q. That's Plaintiff's Exhibit 12 in evidence.

A. And in 1969 the total bowling revenues of our Holiday center was $141,000. Then Dutchess shut down. Last year, the year ended August 31, 1972, we had gone up by $85,000 in our bowling revenues. We did $226,000 last year. And the year now under way, over half done

[826]

now, shows that we will do considerably more than $226,000 this year.

Q. You give for Holiday this span on Plaintiff's 53, $60,000 to $75,000 additional annual bowling revenue.

A. Yes.

Q. Can you tell us the basis for that?

A. Well, I tried to be a little more conservative than the actual experience that we have reflected. Our own bowling revenues since Dutchess shut down, including the year now under way, will show an improvement of almost $100,000 of just bowling revenues. In trying to be more on the conservative side I put down between 60 to 75 thousand dollars for Holiday resulting from the shutdown of Dutchess Lanes.

[827]

Q. That's from your own record; is that what you're saying?

A. Yes.

Q. What is that record again?

A. Exhibit—I forget the number, you just told me—it is a record of Holiday's performance over the——

Q. Plaintiff's 11?

A. Yes.

Q. Now, Mr. Lieblich, you used this formula here; is that correct?

A. Yes, $1328 reflects the net income for each additional $1,000 of bowling revenues.

Q. What you are concerned with really is $328?

A. Yes.

Q. What does that $328 reflect?

A. That's the additional profit that we would receive from the snack bar, the bar, the pro shop and machine and miscellaneous revenues, and shoe rental.

Q. All of which you have testified about before in this proceeding?

A. Yes.

Q. Now, here again, you have your number of years indicated; is that right?

[828]

A. Yes.

Q. Please explain them to us carefully. It starts 12/10/65.

A. That's when Dutchess Lanes opened up.

Q. You are not claiming for anything that happened before that time?

A. No. When I say, "opened up," I stated that improperly.

That's the time that Brunswick took over Dutchess Lanes from Mrs. Levine and began operating it for themselves.

Q. And then it terminates 8/31/69?

A. Yes.

Q. What happened then, again?

A. Well, Brunswick finally shut down Dutchess Lanes in the very, very late Spring, maybe early Summer, of 1969.

Since our bowling period was essentially over, and since almost 80 percent of our revenues for the year were already received at that time, I calculated it through the end of the fiscal year, August 31, 1969, totalled then three and three-quarter years.

Q. That's just a matter of figuring out the number of months here and you come up with three and three-quarters; is that right?

[829]

A. Yes.

Q. Your final damages?

A. Multiplication.

Q. Well, it has a span.

A. Yes. If you multiply 16,000 by 1328, the figure is 79,680.

If you multiply 75,000 by $1328, that's 99,600.

If now you multiply 79,680 by three and three-quarters years, that would be total damages $298,800.

If you multiplied the higher range of $99,600 by three and three-quarters years, that would be total damages of $373,500, for a range of 298,800 to $373,500.

• • •

[835]

Q. Now, dropping down to Paramus Bowl-O-Mat, the heading "Additional annual bowling revenues," again you

[836]

have the figure of 120 to 140 thousand dollars for Paramus.

How were they computed?

A. This is our judgment as to what would happen with all of the bowling revenues that are now being enjoyed by several of the Brunswick centers that surround our Paramus operation.

Q. What centers are those?

A. Lodi Lanes, 40 lanes in Lodi.

Q. Is that a Brunswick-owned center?

A. Yes, one of the BCOD centers.

There is Ten Pins on the Mall, which is in Paramus on Route 4 just a half mile from our center.

Then there is Fair Lawn Lanes, which has 32 lanes in Fair Lawn, which is just a few miles from our center.

Last year Lodi Lanes bowling revenues, $190,000.

Ten Pins on the Mall, which over the years has been our most absolute competitor, they are just down the road, their revenues were $171,000.

Fair Lawn Lanes with its 32 lanes had bowling revenues in the year just ended of $255,000.

Now, I don't suggest, sir, that all of this volume could come into our center in Paramus. Some of it, of course, would go to the other centers in the area.

Some of these bowlers would surely stop bowling if

[837]

they had to drive in heavy metropolitan traffic an extra 15 or 20 minutes.

But knowing the market, knowing particularly the effect on our own revenues in Paramus when Ten Pins opened a half a mile away, it is my judgment that if one or two or three of these centers would close down, our Paramus Bowl-O-Mat would improve in bowling between 120,000 and 140,000 a year.

Q. Now, you say this is based on something more than guess or speculation?

A. Well, it is my judgment, my experience, and awareness also——

[838]

Q. What are you holding in your hand?

A. These are the Brunswick figures that they gave you on subpoena, Mr. Hoffmann, showing the revenues and profit and loss of Fair Lawn Lanes, of Ten-pin on the Mall, and of Lodi Lanes.

Q. So from those you were able to derive a figure which would represent what those Brunswick-owned centers made or realized; is that correct?

A. Yes.

Q. Then there exists in this area certain centers which are not Brunswick centers, and which is not your centers; isn't that so?

A. Yes.

Q. That you testified about the other day?

A. Yes.

Q. Can you just offhand tell us what are those centers?

A. Well, certainly Bowler City, Hackensack, would get some of the business, Frank Esposito, who is very, very crowded now, would get some of the business, Martone's in East Paterson would get some of the business.

Club 300 up on the way up towards Ramsey would get some of the business.

Q. And in computing what you feel that Paramus

[839]

Bowl-O-Mat center would get or the Treadway center would get, did you make allowance for the fact that these other centers that you just described would get some of the business?

A. Oh, yes. If you add together 254,000, if I may do that myself here—Fair Lawn Lanes had $255,000, Tenpin on the Mall had 172—I have rounded out these figures, Mr. Hoffmann—and Lodi had 190,000. That's $616,000 of total bowling—I'm not saying, obviously, we are not going to have that, I think our share would be between 120 and 120,000—it might be higher, but I think that's certainly—excuse me, 120,000 to 140,000.

Q. That is as against what?

A. 616,000.

Q. And how many lanes did Paramus Bowl-O-Mat have?

A. We have 36 lanes.

Q. And again, the total number of lanes, if you are able to compute it, can you?

Can you compute the total number of lanes for the centers which would have enjoyed increased business ac-

cording to your testimony, in the event that the Brunswick-operated centers had not been operating?

[840]

A. Well, let's see if I can remember them all. Bowler City in Hackensack has 50 lanes.

Martone's in East Paterson has, I think, 24 to 32.

Club 300 has 40.

Frank Esposito has 38.

Fair Lawn, Route 4 Bowl, has 18.

Eclipse Bowl, I think, has 24.

About 202 lanes in addition to our 36 would be sharing in the 616,000 bowling revenues in the three Brunswick centers.

The Court: Consisting of how many lanes of Brunswick?

The Witness: 32, 32 at Fair Lawn, sir, 40 at Interstate in Ramsey and 36 in Tenpin on the Mall.

108.

[841]

Q. Now, there are 202 lanes according to your count, not including the Paramus Bowl-O-Mat?

A. Yes, about that, sir, if I remember them correctly.

Q. And then Bowl-O-Mat Paramus was how many again?

A. 36.

Q. So without Brunswick-operated lanes there are a total of 238, is that right, approximately?

A. Yes, right.

Q. And as against the Brunswick centers, who have 108; is that your testimony?

A. Yes.

Q. And in relationship then to the 238, can you just offhand give us a percentage which reflects the 36 lanes of Bowl-O-Mat, Paramus?

A. Well, 238 into 36.

About 15 per cent—16 per cent.

Q. Now, sir, applying the arithmetic you have just done, you take a span of 120 to 140,000 as the division of the 600 or more thousand represented by the Brunswick centers, is that right?

And that's what you have given to Paramus Bowl-O-Mat in the event that those centers were not operated by Brunswick?

A. Yes.

[842]

Q. And ceased to exist; is that your testimony?

A. Yes.

Q. Now may we go on then from there to the figure we see again, $1,140?

A. Yes. The $1140 is from Exhibit—it is our exhibit on Paramus.

Q. 15, if I may supply the number.

A. Thank you.

Q. And that's the amount of net income that we would receive for each thousand dollars of bowling revenues, so if you multiply then the $1140 by $120,000, it would be $136,800.

If you multiply $1140 by $140,000, that would be $159,600, or a range per year of $136,800 to $159,600.

Q. And then the number of years?

A. That's eight years.

Q. Quickly again, how did you measure—the parameters of the beginning and the end?

A. It was in March 1965 that Brunswick first began to operate Fair Lawn Lanes and Interstate Lanes in Ramsey, and since they are still operating those, plus Lodi, plus Ten Pins on the Mall, we have eight, eight years.

Q. Then your final damage calculation over here, what is that; is that a process of multiplication?

A. That's multiplication.

[843]

If you multiply 136,800 by eight years, that's a total of 1,084,400.

If you multiply 159,600 by eight years, that's a total of $1,276,800, for a range of $1,094,400 to $1,276,800.

Q. What is this on the bottom entitled "Summary"?

A. That's a summary of the damages, the first is Holiday Bowl-O-Mat, and the lower range is from the top line for Holiday, the lower range in my judgment would be $298,800.

The higher range from the top of the chart is $373,500.

The next entry, Paradise Bowl-O-Mat, the lower range, the Paradise lower range is $997,600, which comes from the chart above, and the higher range is $1,197,120.

Next entry is Paramus Bowl-O-Mat.

The lower range from the chart is $1,094,400, and the higher range is $1,276,800.

The last entry is for Pueblo Bowl-O-Mat.

There the lower range is, from the chart, $864,830. The higher range is $1,072,030.

Adding them all, all four together, the lower range of the damages we claim would be for these four centers, $3,355,630, and the higher range, $3,919,450.

(Short recess.)

• • •

Supreme Court, U. S.
FILED
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APPENDIX

Volume 2.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
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[869]

CROSS-EXAMINATION.

By Mr. Seeley:

Q. Now, in 1964 was Paramus Bowl-O-Mat competing with Fair Lawn Lanes?

A. Yes.

Q. What is the nature of competition between bowling centers; what do you think of when you say "competition between bowling centers"?

[870]

A. I think of a word like tough or fearless——

Q. Aside from that, what do your bowling centers do which is competition?

A. Their very presence is competition.

Q. Why?

A. Because they are there, facilities are there.

Q. Well, what does their being there do as far as bowlers are concerned?

A. It gives a bowler a choice of centers to go to.

Q. And there are various things about a bowling center which may make them more or less attractive to bowlers, such as location and size, attractiveness?

A. Yes.

Q. Cleanliness?

A. Those are some factors, yes, very important factors.

Q. Are there any other competitive factors you can think of?

A. Yes. Parking, presence of A-2 equipment or a more modern equipment than one center has, if it's carpeted or not carpeted, if the rest rooms are properly maintained, if there is a cocktail lounge, if there is a snack bar, some bowling centers just have vending machines, if there is a pro shop that's available, if

[871]

your personnel are courteous and well trained.

If you have lanes available when the bowlers want them. I think I have touched on most of the major factors.

Q. Do bowling centers advertise at all?

A. Yes, not too much generally, but they do.

Q. And what is meant by "promotion" in the bowling business?

A. Promotion in bowling or in any business are the efforts undertaken to increase sales.

Q. Can you give some examples of what kinds of efforts, promotional efforts are made in the bowling center business?

A. Yes, there are some limited advertising in newspapers, sometimes there are joint efforts in a large area where many centers combine with radio advertising, this would be unusual.

Then there is the real effort which continues all during the year to build new leagues, their constant promotion.

There are efforts to invite ladies into the center in the daytime to either learn to bowl, or if they have learned to bowl to join leagues in the daytime.

There are efforts made with school children to go to school and teach bowling in the schools, or else

[872]

to invite the schools into a center so that they may learn to bowl there.

Or if they have learned to bowl, they continue competition amongst classes or amongst schools themselves.

[873]

Q. When beginners, or ladies, or small children are invited into your centers to bowl, do they usually get, as

an inducement, a special rate of some kind for their first experiences?

A. Yes, that is very often done as part of the promotion.

Q. Now, who was the operator of Fair Lawn Lanes in 1964?

A. American International Bowling Corporation.

Q. And was that, if you know, a fairly good sized chain of bowling centers?

A. Yes, at the time that it went bankrupt I think it was the largest chain. I think it had more lanes in being then than did Fair Lanes. I think at the time of the bankruptcy it was the largest chain in the business.

Q. When AIBC was operating Fair Lawn, did it have any power to exclude Paramus Bowl-O-Mat from competing, to the best of its ability, for bowlers in Bergen County?

A. They were always trying to take our leagues away, and our teams away, and our individual bowlers away.

Q. Were you trying to take theirs away?

A. Yes.

Q. Was that competition?

A. Yes, sir.

[874]

Q. Did Fair Lawn have any power to prevent Pueblo Bowl-O-Mat from competing, to the best of its ability, to get bowlers?

The Court: Not Pueblo.

Mr. Seeley: Paramus Bowl-O-Mat. Thank you.

The Witness: Will you read the question, please.

The Court: Repeat it.

(The question, with the correction, was read.)

A. I can't think of any offhand, Mr. Seeley.

Q. Contrary-wise, did Paramus Bowl-O-Mat have any power that you know of to prevent Fair Lawn from competing for business to the best of its ability?

A. All we could do was keep our place as clean as we could, make it as attractive as possible, teach our employees to smile and say thank you, and do our best to attract more bowlers into our center.

Q. You testified that your company considered bidding for Fair Lawn at the AIBC bankruptcy sale, and then did not, is that right?

A. That is correct.

Q. Was it your company's intention, if it had bid for Fair Lawn, and had won it, to continue it in

[875]

operation?

A. Yes. It was right next to my home in Paterson, it was right next to our headquarters. We thought it would come very easily within the number of centers that we were then managing from our headquarters in Paterson.

Q. If the operation of Fair Lawn had then been transferred from AIBC to Treadway, would that have increased or decreased, or neither, the amount of competition for bowling in Bergen County?

A. You mean instead of having it taken over by Brunswick?

Q. Yes.

A. Well, when Brunswick took it over, they put in a——

Q. My question now excludes Brunswick. If your company, Treadway, had taken over Fair Lawn, would

that have increased or decreased the amount of competition for bowlers in Bergen County?

A. Well, I am trying to answer it as best I could. The fact that Brunswick did take it over, certain things happened, which did have an effect, an adverse effect on us, in competition.

Mr. Seeley: I move that the answer be stricken.

The Court: It is not responsive. So

[876]

ordered.

Listen to the question.

(Question read as follows: "My question now excludes Brunswick. If your company, Treadway, had taken over Fair Lawn, would that have increased or decreased the amount of competition for bowlers in Bergen County?")

A. It would have decreased it.

Q. In what way?

A. There would have been less of the fierce competition between our two centers for leagues.

Q. How about the competition between your two centers and the other centers with which you competed?

A. That would have been the same.

Q. It wouldn't have been any fiercer because you had two centers then instead of one?

A. No, it would have meant that we could have effected certain home office economies in running two centers that were reasonably close together.

Q. You also testified, I believe, that after the AIBC sale you made certain inquiries of Brunswick as to whether Treadway could purchase Fair Lawn, is that right?

A. Fair Lawn, not Fair Lane.

Q. Fair Lawn?

[877]

A. Yes.

Q. And was that with the thought in mind that if you could purchase it you would continue it in operation?

A. Yes.

Q. And if that had happened would the effects on competition have been what you have just described?

A. Yes.

Q. I believe you also testified that at the AIBC bankruptcy sale there were bidders other than Brunswick for AIBC centers, is that right?

A. Yes, there was very active bidding for all of the centers.

[878]

Q. Can you identify any of those who were active bidders?

A. I understand that a Mr. Sidney Friedberg, the president of Fair Lanes, was in court and bid on quite a few. A Mr. Marvin Ollshan, an attorney from New York City, who represented about eight, or ten, or twelve different bowling proprietors, was in court and bid very actively. There was a Mr. Chris Vitolo, whom I understand was in here—I believe, sir; I wasn't in court. I believe there were some gentlemen from Pennsylvania that were bidding for the Pennsylvania centers. But I don't know any of their names.

I just know of some of these men, whose names I have given you, that were here.

Q. Prior to that sale, had it been known by the trustee in bankruptcy, that he was selling the centers subject to their indebtedness to Brunswick?

A. Yes, there was a notice sent out to all interested people indicating the stock of the centers would be sold at the public sale.

Q. And if Treadway had made a bid for Fair Lawn, would it have been your expectation that you would somehow make an arrangement with Brunswick and continue to operate the center?

A. We would have expected to have assumed the debt

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obligations of Fair Lawn Lanes to Brunswick and have met them in the ordinary course of business.

Q. Is it reasonable to assume that any other bidder at that sale had the same idea in mind?

A. I know that Mr. Olshan did; I know Mr. Friedberg understood the realities of purchasing subject to a conditional sale contract at the time.

Q. What change in the bowling competition in Bergen County would have taken place if, say, Mr Friedberg's company had been the successful bidder for Fair Lawn and taken over its operation?

A. No change.

Q. Paramus Bowl-O-Mat now has been competing with Fair Lawn, under Brunswick operation, for somewhat more than seven years, hasn't it?

A. Yes.

Q. During those seven years what, in your opinion, has Fair Lawn done, if anything, which is other than the normal kind of competition in the bowling industry?

A. Well, the first thing they did which had an adverse effect on our center at Paramus, and I think still has an adverse effect, they put in their speeded up A-2 equipment. This is very important in Bergen County, being in the metropolitan area, where the bowlers want to finish up as fast as they can. By the use of the A-2

[880]

equipment the two leagues can finish sometimes twenty minutes to a half an hour earlier than with the equipment that we have.

I think that Fair Lawn attracted then, and still continues to attract, some leagues that might be in our center but for the fact of these A-2's.

Q. Would you say, then, it was a stronger competitor because of that?

A. Yes, I think so.

Q. Does Treadway ever do anything to modernize the bowling equipment in any of its centers?

A. Yes, it tries.

Q. And what is the purpose of that?

A. To have our centers at all times as updated as possible.

Q. So as to make them as competitive as possible?

A. Yes, we want to attract as many bowlers as we can at all times.

Q. Is Brunswick the only company which makes a fast ball return, such as the A-2 thing is?

A. Well, AMF, your major competitor—of Brunswick—has a machine, but I don't think that it speeds it up at all. I think Brunswick's A-2 certainly does speed it up, and much more so than the AMF machine.

[881]

Q. This A-2 can be purchased as an addition to the original model Brunswick pinsetters, can it not?

A. Yes.

Q. You don't have to put in a whole new machine?

A. No, but it costs $1500 apiece.

Q. Do you know of any bowling center operators, other than Brunswick, who have installed them?

A. Yes.

The Court: A-2's?

Mr. Seeley: Yes, sir.

The Court: In Bergen County?

Mr. Seeley: Anywhere.

The Court: All right.

Q. Do you know of any in Bergen County?

A. No, I really don't.

Q. Has Fair Lawn Lanes, under Brunswick's operation, prevented Paramus Bowl-O-Mat from competing for bowling business, to the best of its ability?

The Court: Repeat that, Mr. Reporter.

(Question read.)

Mr. Hoffmann: I object——

A. Yes.

Mr. Hoffmann: —to the form of the question.

The Court: He has answered it already. He

[882]

said yes.

Q. The answer was yes?

A. Yes.

Q. In what way?

A. Well, as soon as Brunswick took over, they had not only in Fair Lawn but throughout the country, a very cut rate program for school children. They charged a price—I am a little bit hazy now—but we were charging about $1.45 for something which Brunswick sold for a dollar.

They gave away free hot dogs, and free shoes, and did attract a lot of children that had been bowling in our center.

On another occasion I believe they gave away—I know Ten Pins did; I think Fair Lawn did, too—they gave away certain trophies and things—my staff people would know this better—that we hadn't given away. I know that was true in Pueblo. I think it was true in Fair Lawn's case.

They had a very important program, which I think still continues, on going to Europe, with all of the Brunswick centers, all over the country, participating. That was an important inducement to bowlers. I remember that several of our managers around the country wrote to us about this, something that we couldn't afford to

[883]

have as competition.

I think these are the large major areas. I think at one time, too,—yes, we were selling—in those days we sold nothing but Brunswick equipment in our pro shops. Every nickel—everything we had came from Brunswick —our shoes, our bags, our balls. And I think—they were price fixed. And then we learned that in Fair Lawn Brunswick—the Brunswick center—was selling the identical ball, but with a different name on it, at a lower price.

I think that is the end of the things I can think of right now, Mr. Seeley.

[884]

Q. Now, the special prices for children, and the "bowl your way to Europe," those are what you call promotions, are they not?

A. Yes. Cutting prices is promotion, too. But—yes.

Q. And the purpose is to attract additional bowlers?

A. Yes.

Q. Do programs for teaching bowling to children, and other beginners, in your opinion, have any beneficial results for the bowling business as a whole, in addition to the particular center where the lessons may be given?

A. Well, Brunswick's program, their cut-rate program that summer, wasn't to teach children how to bowl. They were children who were already knowledgeable about bowling.

Q. It was to encourage them to bowl?

A. Just have them bowl and pay for it.

To answer the other part of your question, yes, these efforts are intended to build more bowlers.

Q. This, "bowl your way to Europe" program that Brunswick had, do you know how many people out of all of the bowlers in Brunswick centers were able to win trips to Europe?

A. No, I don't.

[885]

Q. Suppose Treadway were to take a quarter of a cent per line from its lineage, could it send two bowlers to Europe on a de luxe tour?

A. We were losing money in Paramus, and have been losing money at our present price. If we reduce it by a quarter of a center, we would lose more money.

Mr. Seeley: I move to strike the answer.

The Court: Repeat the question.

(Question read as follows:

"Suppose Treadway were to take a quarter of a cent per line from its lineage, could it send two bowlers to Europe on a de luxe tour?")

The Court: I think the answer is fairly responsive. They were losing money and this would cost them more money. Isn't that what your answer is, essentially?

The Witness: Yes, sir.

The Court: I will let it remain.

By Mr. Seeley:

Q. Does a business sometimes spend money to make money, to increase its business?

A. Yes, Mr. Seeley.

Q. Do you think it would have increased the business of the Treadway houses to have a European travel promotional program, if it could have been done for a

[886]

quarter of a cent a line?

A. I think, sir, if we could have afforded it, the answer would be yes, I would like to try it. I think our staff would love to do that.

Q. Were there any other bowling centers in the Bergen County area, that you know of, which had promotional programs which Paramus Bowl-O-Mat did not have?

A. That's a rather broad question. I would have to say that I can't think of any.

Q. What were the promotional programs which Paramus Bowl-O-Mat had?

A. Yes, sir; I can answer to that.

Q. All right.

A. I think I endeavored to answer that question earlier, that we have a constant program of always working with individual bowlers, to ask them to join leagues.

At the right time of the year we try to create winter leagues and then summer leagues.

This is done by our managers, or regional managers, visiting the bowlers, having them sign up about joining—having our desk people often wear buttons about the organization of leagues. A great bulk of our business comes from the organization of these leagues.

We have been very constant in our efforts to

[887]

attract ladies to come into our center in the daytime by telephone solicitation. We have done this for many, many years, as have many other proprietors, as well.

We have had a school program for many years in Paramus, where we taught so many children to bowl. They have grown up now and are real bowlers.

We have had follow-up programs by mail. When the season opens up and we find that Harry Smith or Mary Jones, who bowled with us last year, isn't with us now, we try to find out why didn't he or she come again.

So these are some of the efforts that we are constantly exercising to build our business, as well as the basic things of having a clean center, nicely carpeted, attractive, well policed, ladies' rooms clean, men's rooms clean, desk personnel trained to smile and say thank you; our desk personnel properly attired, with a jacket, with a Bowl-O-Mat emblem.

These are all part of promotion, in our sense of that word.

Q. Except for the smiles—which I think are free—do most of the things which you have mentioned involve some cost?

A. Not to be facetious, but the smile is the most difficult—most expensive of all of these things.

[888]

The question was: Do these promotions involve a cost?

Q. Yes, some cost.

A. Well, to keep the men's and ladies' rooms clean, we have the janitors. It's just a matter of making sure that they do their job properly. Yes, there is a cost for telephone solicitation. There is a small cost for direct mail campaigns.

But basically, our regular staff is able, during the normal course of their activities and duties, to handle these promotional efforts.

[889]

Q. At Paramus Bowl-O-Mat do you furnish any prizes for leagues, trophies, or anything like that?

A. I may be in error, sir—years ago, yes, but I believe that our staff would know better. I think in more recent years we have eliminated those. I may be in error. I think we still may give some trophies to leagues at the end of the season.

Q. Well, is it a proper characterization of what you have been telling me that, in your opinion, Fair Lawn under Brunswick operation has been a more aggressive competitor than someone else might have been?

A. Yes, I think that is a fair statement.

Q. Pueblo—pardon me. I do that because I did it in dictation, and Pueblo is written down here.

Paramus Bowl-O-Mat has not been indebted to Brunswick since early 1966, has it?

A. That is correct, all of its obligations were paid in full in January of 1966.

Q. And you are not claiming, are you, as to Paramus Bowl-O-Mat, any damages because of discrimination in credit terms?

A. No, our damage claim in Pueblo arises—excuse me, sir. You are very persuasive.

Q. It is easy to do.

A. In Paramus—

[890]

The Court: You are not doing it on purpose, are you?

Mr. Seeley: No, sir.

A. Our damage claim in Paramus we restricted yesterday to the time of the opening of Fair Lawn Lanes and Interstate Lanes under Brunswick's direction.

Q. Has Fair Lawn Lanes, under Brunswick operation, any power to prevent Paramus Bowl-O-Mat from competing for business to the full extent of its ability to do so?

A. Yes.

Q. What does it stop Paramus Bowl-O-Mat from doing?

A. That wasn't your question, sir.

Mr. Seeley: Let's have the question read, to be sure that we are on the same track.

(Question read as follows:

"Question: What does it stop Paramus Bowl-O-Mat from doing?")

A. Well, I am trying to answer the other question, to which I said yes. Fair Lawn has the power to now put in automatic scorers, which are very expensive, which we couldn't afford. They have the power to cut the price, if they want to. Ten Pins, which is right next to us, has had for years a lower price than we. We have had a

[891]

terrible problem with Ten Pins' pricing. They can take our managers away by offering more money. We have had that problem over the years from time to time. They can have ten people go to Europe instead of one people go to Europe.

There are many, many things they could do which would make our lot even more difficult than they have made it these last eight years.

Q. Are there any things like that that you could do to Fair Lawn?

A. Not that I can think of, not with our losing money as we still are in Paramus.

Q. You couldn't hire away any Fair Lawn employees, or Brunswick employees?

A. Sure, we could. But then we would be increasing our losses.

Q. What would happen if you lowered your price?

A. If we lowered our price I think we would just lose more business.

Q. When was it that Brunswick took over Ten Pins?

A. I think it was in 1969.

Q. Did any change in price of bowling at Ten Pins occur at that time?

A. Yes.

Q. What was the change?

[892]

A. I think the price was reduced a little bit.

Q. Is your recollection clear about that?

A. Yes. Yes, I know in my discussion with our staff people about our business in Paramus, I learned constantly that the Ten Pins on the Mall, which is right next to us, charges less for their play than we are charging. As

a matter of fact, they charge less than Lodi. They charge less than Fair Lawn, your Ten Pins operation.

Q. Who operated Ten Pins before Brunswick began to operate it?

A. Mr. Tom Granatelli, and a partner, whose name I don't know.

Q. Did they operate it from the time it opened until 1969?

A. Yes.

Q. During that time were the prices at Ten Pins lower than they were at Paramus Bowl-O-Mat?

A. I don't think so. We were always just about the same.

Q. Before Ten Pins opened, but when it was under consideration, your companies made efforts to become the operator of that center, did you not?

A. Yes.

Q. And at that time was the building where the bowling center was going to be located in existence, or

[893]

was it just on the drawing board, or was it under construction?

A. Well, it was in the large shopping center in Paramus that the Allied Store Corporation was building. It was to go downstairs. I think the top structure was already in being. I think the downstairs was just—if I remember—was excavated.

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[894]

Q. Mr. Lieblich, did Brunswick when it took over the operation of Fair Lawn in 1965 start right in the first year

with these aggressive, competitive measures that you mentioned?

A. Yes.

Q. And continued them so long as they continued to operate?

A. Well, they haven't removed the A-2 equipment, that's still in there.

Q. How about the Bowl Your Way to Europe?

A. I think, sir, that's a constant Brunswick promotion.

I think recently I was in a Brunswick center and I picked up a leaflet, I think that's still being done throughout the country.

Q. And the special youth price; is that a continuing thing?

A. No, I don't believe they have done that in the last few years.

Q. In general, would you say that Brunswick's method of operating Fair Lawn has been about the same during the seven-year period that they have operated it?

A. Yes.

[895]

Q. You mentioned the fact that you thought Brunswick had the power to hire away Bowl-O-Mat employees.

Do you have in mind any instance where Brunswick did hire away a Paramus Bowl-O-Mat employee?

A. Well, I remember a Jack Klausmayer, who passed away some years ago, had been one of our original supervisors, and he left to go to work for Brunswick.

Later he returned to our company, but he left.

Q. When was that?

A. Oh, gosh, well, it was after BCOD was in operation, so Jack passed away now for about four years.

I guess about 1965 or 6.

Q. Do you know any other instances where someone left your company and went to work for Brunswick?

A. Directly or over a span of time?

Q. Directly.

A. There was a John Mahelevich. John had been a manager for us in Des Moines, Iowa.

Then I think we had given him some additional regional manager responsibility, and John went to work for Brunswick in their BCOD operation.

There was a lapse of time.

Q. There was a lapse of time between?

A. Yes, not too long, but a lapse of time.

[896]

Q. Any others that you can think of?

A. No.

Q. What was the first full year that Paramus Bowl-O-Mat was in operation?

A. It opened for business, I believe, on or about September 1, 1958.

Q. Do you recall what its profits or loss was in the first year of its operation?

A. No, it was a very profitable one, but I don't have the figures.

Q. Do you have the approximate figure in mind?

A. It is not fair to guess, Mr. Seeley. I know we were doing 15 and a half thousand lines per lane, which made it a very profitable center.

If I were to guess, I'd guess it probably made 60 or $70,000.

Q. And do you remember what the profit was in 1960?

A. Yes. The lineage remained at that very high figure for the first three years.

Q. And did the profit remain at that same figure?

A. Yes. I don't remember exactly what they were, but I do remember it was quite profitable.

Q. Now, in 1961, I believe Paramus Bowl-O-Mat

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had a profit of some $43,800; is that right?

A. I think that's what I testified to.

Q. Would you like to get out some papers——

A. Mr. Hoffmann, there is a chart on Paramus, if you give that to me, I could—I may have it in my briefcase——

Mr. Hoffmann: Exhibit 13.

The Court: It is in evidence. Statement of income and revenue—that's 1965 through 1972.

The Witness: Yes, I have a copy.

The Court: P-13 is Paramus?

The Witness: Yes, I have a copy.

Q. What was the profit in 1961?

A. $37,746.

Q. What was it for 1962?

A. $17,419.

Q. Now, what happened between 1961 and 1962 that accounted for that drop in profits?

A. Some additional bowling centers that began to open in the area.

Q. Do you know which ones they were?

A. It is really hard to pinpoint for each year so I will have to say I just don't recall which ones.

Q. In 1963, what was the profit of Paramus

[898]

Bowl-O-Mat?

A. No profit. We lost $3,922.

Q. What happened between 1962 and 1963 which accounted for that in your opinion?

A. Yes, now that I can be sure of because that was when Ten Pin opened up right next to us in Paramus.

Q. So it was the additional competition from Ten Pin which caused that; is that right?

A. Yes, I believe so—yes.

Q. And then in 1964 what was the profit?

A. We had a profit of $14,840.

Q. What caused that change from the previous year's loss to a profit?

A. My best memory, as I said the other day, I think the landlord gave us some relief because of the difficulties that we were experiencing.

Q. In 1964 when you made $14,840, was Fair Lawn in operation?

A. Yes.

Q. And was Interstate in operation?

A. Yes.

Q. And was Ten Pin in operation?

A. Yes.

Q. And was Lodi Lanes in operation?

[899]

A. Yes, I believe so.

Lodi opened a little bit later, but I think Lodi was in operation in 1964.

Q. Then in 1965 what were the results?

A. A loss of $1,644.

Q. Now, aside from the fact that in 1965 the operation of Fair Lawn and Interstate changed from AIBC to Brunswick, do you have in mind any other changed competitive conditions at that time?

A. Yes. Certain of the practices that Brunswick did in Fair Lawn, as soon as they took it over.

Q. I am asking if you know of any change in competitive conditions other than were brought about by Brunswick's taking over Fair Lawn?

A. I'm sorry, Mr. Seeley, I misunderstood your question.

No, I don't. The other factors were generally the same.

Q. And then what were the profit or loss results at Paramus in 1966?

A. We lost $39,894.

Q. That's a drop of how much from the previous year?

A. $38,000.

We lost an additional $38,000 that year.

[900]

Q. And to what do you attribute that?

A. I think the A-2's that Brunswick put in Fair Lawn, its aggressive competition with us, and just a general worsening of the bowling business in the area.

Q. I'd like to have you tell us more about the worsening of the business.

What were the causes of it?

A. It is just common knowledge. These were the terrible years in the bowling business when so many people were going out of business.

There was just a decrease in the interest of people in bowling.

Q. I see.

How long did that decrease of interest continue?

A. Right up until the end of 1970. Suddenly, about that time, sir, not just in Paramus but everywhere in country, we began to see, and everyone in the industry began to see, a reversal of their losses of prior years.

Suddenly bowling began to get to be a much better business, and the year now underway is just a fine year.

Q. Now, after 1966, Paramus Bowl-O-Mat continued to lose substantial amounts of money each year, did it not?

[901]

A. Yes.

Q. And during those same years, do you know whether Fair Lawn lost money, or made money?

A. I can tell, sir, by looking at the spread sheet on that.

Q. Fine, yes. What?

A. Fair Lawn Lanes did make money in all those years.

The Court: What years were they?

The Witness: 1966, 1967, 1968, 1969, 1970, 1971 and 1972.

Q. How about Interstate Lanes?

A. Yes, they made a fine profit, too, in each of those years.

Q. Looking at the matter of profits which Fair Lawn and Interstate made in those years, would you say that those two houses were able to afford the cost of the A-2s and of the promotional efforts which they were making during that period?

A. Yes, I would have to answer that question, yes.

The Court: What about Ten Pins?

The Witness: They were losing money, sir.

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[903]

Q. And Ten Pins on the Mall lost money under Brunswick's operation in 1969, didn't it?

A. Yes.

Q. And in 1970?

A. Yes.

Q. And in 1971 what did it do?

A. It made a profit.

Q. In 1972 what happened?

A. It had a loss. It has a loss three of the four years.

Q. Now, sir, I'd like to go from Paramus, New Jersey, to Poughkeepsie, New York.

As I understand it, you purchased the Holiday Lanes in Wappingers Falls?

A. Yes.

Q. And when was that?

A. In December of 1960.

Q. And at that time what were the other bowling centers which were in existence in that competitive area?

A. Well, I believe that Hoe-Bow was there, that Mardi-Bob was there, Touponce Lanes I am quite sure was added a few years afterwards. Mrs. Levine's center—it had a fire at one time, I think it was there when we acquired it, and then it burned down and reopened or it burned down just before we bought ours, but it was

[904]

sometime in that span of two or three years that there was a fire and it was rebuilt and she reopened.

Q. Was there one named Hyde Park?

A. Yes. I think that was added a few years after 1960, but I may be in error.

Q. Approximately when, to the best of your recollection?

A. I would guess that Hyde Park, I would think that Hyde Park opened approximately 1961 or 1962.

Q. And to the best of your recollection approximately when did Touponce open?

A. I think about the same time, Mr. Seeley, 1961 or 1962.

Q. And after 1961 or 1962 did the number of bowling centers then remain the same until at least 1965?

A. Yes.

Q. Now, did Holiday Bowl-O-Mat compete with all of these other centers that you have named?

A. Yes.

Q. Did you when you purchased the Holiday Bowl-O-Mat make any inquiry into the number of persons per bowling lane in the area?

A. No, we bought Holiday Bowl-O-Mat after I examined its profit and loss statement and was satisfied it was a profitable operation.

[905]

Q. Do you have any idea—did you get any idea or knowledge later as to what the ratio of persons to lanes is in that area?

A. Only from a Brunswick survey that I saw some years after the event.

Q. And that said 700-something; is that right?

A. Yes.

Q. Do you think that was correct?

A. I don't know.

Q. Well, whatever the number of persons to lanes was in 1965, it wouldn't have been any higher in 1960, would it?

A. Well, the Poughkeepsie area which was so very, very prosperous in those earlier years, the prosperity resulted from the great expansion of IBM in the area. They had there then one of their largest plants, I think they made electric typewriters there, it is one of their biggest plant facilities.

About sometime around 1962, I believe, or 1963, they moved their typewriting production to another area, and I know that a lot of the IBM employees left the area.

I know a nephew by marriage works for IBM, and I used to visit him up in Poughkeepsie, and he was transferred, and there were many For Sale signs as I visited on their homes on occasions.

[906]

So there was in those few years a bit of a depression in the Poughkeepsie area.

Q. Who was the operator of Mardi-Bob?

A. Mr. Robert Hoe, Bob Hoe.

Q. And he still is?

A. Yes, he is.

Q. And who is the operator of Hoe-Bow, the same man?

A. Yes.

Q. And when Touponce came into existence, who operated that?

A. There is a Mr. Touponce. I think he passed away recently, but there was a Mr. Touponce.

Q. Do you know who operates that now?

A. I think Mrs. Touponce, yes, I think she does.

Q. Who operated Hyde Park?

A. I don't recall.

Q. Now, did Mr. Hoe by reason of owning two bowling centers in Poughkeepsie have any power to prevent Holiday Bowl-O-Mat from competing for business to the best of its ability?

A. I don't think so.

Q. Did you as the owner of Holiday Bowl-O-Mat have any power to prevent Dutchess Lanes from competing to the best of its ability?

[907]

A. No, I don't think so.

Q. And vice versa, I suppose?

A. No, that isn't true.

Q. Did Mrs. Levine as the operator of Dutchess Lanes have any power to prevent Holiday Bowl-O-Mat from competing?

A. Mrs. Levine, no.

Q. It's only when you get to Brunswick that you say that—

A. The price was cut at Dutchess Lanes.

Q. When was that?

A. After Brunswick took it over.

Q. Did that prevent you from competing for business?

A. It made it more difficult for us to get league business. The fact that our business has improved so much since Dutchess closed down—

Q. Just a minute, I don't want to cut you off from making a full answer—

A. Excuse me.

Q. Please don't go on from there.

Mr. Hoffmann: May I hear that comment read back?

(Record read.)

Mr. Hoffmann: Your Honor, may I ask if the

[908]

witness has more, and he was about to answer, that he be permitted to answer the question?

The Court: I think what Mr. Seeley is getting at, don't volunteer any information, try to be responsive.

Mr. Seeley: That's right.

The Court: All right, proceed. What's the next question?

Q. Was Holiday Bowl-O-Mat profitable during the years 1960 to 1965?

A. Yes, every year.

Q. And was it profitable in 1966?

A. Yes.

Q. And in 1967?

A. Yes.

Q. What was the profit in 1967?

A. $17,392.

Q. And then what happened in 1968?

[909]

A. Our lineage decreased and we lost $39,190.

Q. That's a drop of over $50,000 from the previous year; is that right?

A. That's right.

Q. What happened that caused that?

A. Well, Dutchess was taking some of the business that we thought should have been at our center, and again it was just a general decline in the interest in bowling in the area.

I think, also, sir, a more complete answer, it may have been at that time that Mr. Hoe put on a small addition or a—an addition to one of his bowling centers.

Q. How much of an addition, do you know?

A. I think he went from—I think he added 12 lanes or 14 lanes to one of his centers.

Q. Would that increase the amount of competition?

A. Oh, yes.

Q. Did any other bowling center add lanes shortly after 1965?

A. I think that Mr. Touponce increased his center from 16 lanes to 24 lanes about the same time.

Q. And did that also increase the competition in the area?

A. Yes, it did.

[910]

Q. Could that have had anything to do with the decline in the profitability of Holiday Bowl?

A. Yes.

Q. And then in 1969 was there a loss of some $51,000?

A. Yes, that was the year of our greatest loss.

Q. Now, what was Brunswick doing differently at Brunswick lanes in 1969 when Holiday lost $51,000 than it was doing in 1967 when Holiday made $18,000?

A. Just keeping it alive.

The Court: When did Dutchess close, do you recall?

The Witness: Yes. The latter part of 1969, it was in about May or June, sir, of 1969.

The Court: Because I notice, Mr. Seeley, on P-47, on page 9, item 298, there aren't any figures of Dutchess in 1969.

Mr. Seeley: It was closed before the end of the year.

The Court: Yes.

Mr. Seeley: That's right.

The Court: What is the basis of authority for the loss? You just testified as to certain losses of Dutchess lanes.

The Witness: They closed in May of 1969.

[911]

The Court: What is the authority for the amount of money that they lost in 1969, because I don't see it on P-47?

The Witness: I misunderstood your Honor's question.

The Court: Let me put it this way: In P-47, it is an analysis of profit and loss of BCOD centers, right?

The Witness: Yes.

The Court: Item 298 on page 9 doesn't show anything in 1969 or thereafter.

The Witness: Yes, because it wasn't being operated at the end of the year.

The Court: Only operated for a certain portion of the year?

The Witness: Yes.

The Court: All right.

By Mr. Seeley:

Q. What was the month in 1969 as near as you can remember when—

A. May and June 1969.

Q. So that it was not in existence at a time when it would affect Holiday's results for the year ending August 31, 1970?

A. That's right.

[912]

Q. And in the year ending August 31, 1970, did Holiday lose $27,000?

A. Yes. It lost $24,000 less than it lost in the prior year. It had improved by $24,000 after the close of Dutchess.

Q. Excuse me, I didn't mean to interrupt you—

A. All right.

Q. When I'm looking down and you stop for a minute, I tend to think you are through, but maybe you're not.

A. I'm sorry.

Q. And in 1971 what was the result of Holiday Bowl-O-Mat?

A. We made a very small profit, $1821.

Q. But that was about—it made you about $29,000 better off than the year before?

A. Yes.

Q. To what was that improvement due?

A. Well, at this point Dutchess was already closed for over a year, because it closed too late in 1969, we weren't able to get the leagues, the league season, Mr. Seeley, begins on September 1, Dutchess closed in May or June of 1969, consequently we should have signed up already, we sign up generally in January, February and March, we should have signed up already our winter

[913]

leagues for September 1 of 1969, but we didn't get them.

The next year, since Dutchess was closed for a year, we were able to contact, solicit and promote former Dutchess bowlers to come into our center.

Q. Did you make any record of the actual number of Dutchess bowlers who after Dutchess was closed became regular bowlers at Holiday?

A. I don't recall that.

Q. Can you state how many leagues which formerly were Dutchess leagues subsequently became Holiday leagues?

A. No, I cannot.

Q. Now, in 1972 you had a very fine improvement in profit at Holiday, did you not?

A. Yes.

Q. From $1800 to $47,800?

A. Yes.

Q. And to what do you attribute that?

A. A lessening of the competition in the area with Dutchess closed, plus the fact that bowling generally throughout the whole country has improved, plus the fact that we were able to get a little better price for our games now than we had been two years earlier.

IBM, I think, has increased its employment again in the area. I think these are all factors in addition

[914]

to the shutdown of Dutchess that have created a fine improvement, almost $100,000 improvement since Dutchess closed down.

Q. And is it your opinion then that the almost $50,000 of improvement at Holiday in 1972 can be traced back in substantial part to the closing of Dutchess in 1969?

A. Can I see the exhibit?

The Court: I think we have a smaller edition of that, do we not?

The Witness: I have a copy.

(Record read.)

A. No, I think between 60 to 75 thousand dollars can be attributed to the shutdown of Dutchess.

Q. Of profit?

A. Of bowling.

Q. At the end of your 1968 fiscal year when Holiday had lost $39,000 did Treadway give any consideration to closing it?

A. No.

Q. And at the end of your 1969 fiscal year when Holiday had lost $51,000 did Treadway give any consideration to closing it?

A. No. Dutchess was already closed down and we knew that our future would be profitable.

[915]

Q. Going back to Paramus Bowl-O-Mat, sir, in 1967 after Paramus Bowl-O-Mat lost $37,000 in 1966 and $48,000 in 1967, did you give any consideration to closing it?

A. No, all of our equipment was free and clear.

Q. And in 1968 when it lost over $68,000 did you give any consideration to closing it?

A. No.

Q. And in 1969 when it lost $55,000 did you give any consideration to closing it?

A. No.

Q. In 1970 when it lost $55,000 did you give any consideration to closing it?

A. No.

[916]

Q. Now, what were your business reasons?

A. Number one, we had already filed our antitrust law suit against your client and we were very confident of the outcome. We certainly didn't expect that even Lodi would be taken over to compete against us.

We looked forward to ultimately a successful and happy end to our Paramus nightmare.

Q. And does a successful and happy end of this litigation mean to you that Fair Lawn and Ten Pin are going to be closed?

A. My concern is with the profitability of our Paramus Bowl-O-Mat location.

Mr. Seeley: I move that the answer to the question is not responsive.

The Court: Repeat the question and the answer.

(Record read.)

The Court: I will permit that answer to remain. But, also, I want him to answer that question, too.

Repeat the question. I want that answer to remain.

(Question reread.)

A. Not necessarily.

[917]

Q. Suppose they were to remain open, what prospects do you think there then would be of Paramus Bowl-O-Mat becoming profitable?

A. If the jury and the Court would restrict their activities so that fair and proper competition could remain now, and we could be assured that it would remain in the future, many of our concerns would then be put to rest.

Q. Suppose those two centers, and Interstate, were to be sold to some independent operator, such as Mr. Friedberg's company, what would that do to relieve the losses you are suffering?

A. Then we would take our chances of competing on an equal basis with anyone else.

Q. If you saw that there apparently was no prospect of making Paramus Bowl-O-Mat profitable by taking your chances in competing, would you close it?

A. I think our board of directors would insist that we do that.

Q. When National Bowl-O-Mat Company was organized in 1961, was it with the realization that there might be more bowling centers constructed?

A. Oh, yes, sir; by our company.

Q. No, in competition, to operate in competition with your companies.

[918]

A. That prospect was, of course——

Q. It was something you had no control over, is that right?

A. That is correct.

Q. And you looked forward to the possibility—I don't mean you looked forward, but you foresaw the possibility, is that correct?

A. Yes, of course.

Q. In your Holiday Bowl-O-Mat, what, if any, kinds of promotional efforts do you undertake?

A. I would say identical to those I have described in Paramus. Our promotions are generally planned from our home office and our regional supervisors are entrusted with the responsibility of seeing that all these programs are carried out the same way in all of our centers, unless there is a particularly unusual situation in a community which wouldn't lend itself toward that promotion.

Q. Well, was anything unusual done after Dutchess closed?

A. Yes.

Q. What?

A. I am sure that we tried to reach every one of the bowlers who have been at Dutchess to try to get them to our center.

[919]

Q. Then that would be by mail, telephone and various ways like that?

A. Yes, Mr. Seeley.

Q. Was Paramus Bowl-O-Mat able to survive during the years it's been losing money because of help Treadway Companies could give it?

A. Yes.

Q. You don't see anything wrong, do you, in a parent company helping its subsidiary to survive, with financial help?

A. Well, Brunswick had required our parent company to guarantee the obligation of Paramus. If it had not been for that, perhaps we would have closed Paramus some years ago. But once that guarantee was given, and once our parent company had advanced more moneys to Paramus to enable it to pay in full, the debt obligation to Brunswick, there was.

Q. But that obligation expired in 1966, did it not?

A. Yes.

Q. And Treadway continued to advance money to keep Paramus Bowl-O-Mat going thereafter, did it not?

A. Yes, as was required.

Q. My question was: Did that seem to you a proper business practice?

[920]

A. Yes.

Q. You do not feel that it was unfair to any of Paramus Bowl-O-Mat's competitors for Treadway to do that?

A. No, I don't, sir.

Q. There was some testimony about the lease of the Dutchess Theatre. Do you recall that it was mentioned that the lease which Mrs. Levine had called for, I think, $36,000 a year, and that Brunswick negotiated a new lease for, I think, $24,000 a year?

A. Yes, there was such testimony, I believe, the other day.

Q. Do you know who Mrs. Levine's landlord was?

A. I think it was a real estate company that was owned by her children, her husband's estate, and herself, I believe.

Q. So that if Dutchess was paying the 36,000, it was, in effect, paying it to the same people that owned it, is that right?

A. No.

Q. No? Who owned Dutchess?

A. I think Mrs. Levine herself.

Q. And the rent would be paid to——

A. To her children.

[921]

Q. Her and her children?

A. Yes. That's my best memory.

Q. Would you have paid $36,000 rent for that 26-lane house in 1965?

A. No, I don't think that I would have. I know I wouldn't.

Q. Sir?

A. No, definitely would not have.

Q. Would you have paid $24,000?

A. No. Any intelligent businessman, looking at the figures, wouldn't have paid anything for rent, because they couldn't make a profit out of it.

Q. Is there such a thing as a rule of thumb standard of what a bowling center can pay per lane for the rental of the premises?

A. Yes.

Q. What is that?

A. For a profitable operation we have a rule of thumb of $1,000 per lane, which means in a profitable operation, if you have a 40-lane bowling center, you can afford to pay a landlord $40,000 a year rent.

Q. The landlord sometimes wants you to, doesn't he?

A. Very often, sir.

Q. And if you are stuck on a lease, you have a

[922]

little problem?

A. That's true.

Q. Right. Now, I would like to shift the questioning for a little while to Pueblo, Colorado.

In Pueblo Bowl-O-Mat did Pueblo pay Brunswick its equipment obligations up to December 1961?

A. Yes, I believe that it did.

[923]

Q. And then at the end of 1961 did it stop making any payments to Brunswick and not make any more until sometime in 1964?

A. No, that is not entirely correct, sir. Pueblo did pay Brunswick during 1962 $20,000 on its lanes contract, and then beginning in February of 1962 held off any further payment on that, or on its pinsetter payments, since it had requested a rescission of the purchase order with Brunswick.

Q. During that time were there negotiations between you and Brunswick about resuming payments?

A. The negotiation was: Would Brunswick take the center back from us or not?

Q. And did they want it back?

A. No.

Q. Did you want to give it back?

A. Yes, sir.

Q. Then did there come a time in 1963, in the early summer, when Pueblo Bowl-O-Mat and Brunswick negotiated an extension agreement of the remaining indebtedness?

A. Yes, that was part of the overall settlement of our request to rescind the purchase agreement.

Q. And in connection with that, the considerations are recited in the release, the waiver of interest

[924]

charges the cancellation of some of the open account, and so forth, is that right?

A. I don't recall if that was recited in the release or not.

Q. Well, whether it was or not, is it a fact that the wiping out of those items—to which you have testified, I believe—took place at that time, Spring of 1963?

A. Yes, Mr. Seeley, that's true.

Q. And when were the payments to resume under the agreement which was reached in Spring of 1963?

A. In October of 1963.

Q. During the period of time from the beginning of 1962 until the middle of 1963, when Pueblo Bowl-O-Mat was not paying Brunswick, was that with Brunswick's permission?

A. No, it was as a result of our demand for a rescission of the purchase agreement, and to restore us to where we would have been if it had not been for misrepresentation.

Q. But that was not due to any extension or forebearance, I take it, that Brunswick granted, is that right?

A. No, that was our position.

Q. Right. And then from the period from July

[925]

1963 to October, when you weren't paying them, that was pursuant to an agreement with Brunswick?

A. Yes, under the refinance agreement payments were not to begin until—as I best recall—October or November of 1963.

Q. From October 1963 to October 1964, did Pueblo Bowl-O-Mat pay the full amount of its equipment obligations under the extension agreement?

A. From my records here, sir, I don't know if they paid—I know they paid $30,000 to Brunswick from the period October 1963 through the end of the fiscal year, which was August 31 of 1964. The following year they paid off the contract in full.

Q. But you don't know whether or not that was the amount that was due during that period?

A. Not without checking further in the record.

Q. You have no recollection of Brunswick pressing you for additional payments during that period?

A. Yes, you are right. I am sure they did press us, right. They pressed us.

Q. What do you know about whether Brunswick was pressing the operator of Belmont Lanes?

A. He told me no.

Q. When did he tell you that?

A. In Colorado Springs.

[926]

Q. When?

A. I can't remember the time. But I remember Mr. Holt did tell me that he wasn't making any payments to Brunswick. And the record I have from Brunswick reflects the truthfulness of his statement.

Q. Did he tell you that Brunswick was not pressing him for payment?

A. No, I don't think he ever said that.

Q. Do you know whether or not Brunswick was pressing for payments?

A. I can't answer that question.

Q. Do you know of any part of what Belmont Lanes owed Brunswick which it foregave?

• • •

[927]

A. Yes.

Q. What did it forgive?

A. Well, looking at my notes, which came from the Brunswick payment card on Belmont, after an original deposit was received there was a note balance of $405,000. Nothing was paid—if I can use a thousand dollars as nothing in terms of this amount of money.

The contract was then re-written some years later—a year later—for still the same amount, without adding additional interest for the time—that

[928]

they were in default.

Q. Was that substantially what Brunswick did with you in 1963—

A. No.

Q. —rewrite the amount of the indebtedness, with the interest waived?

A. No. Brunswick settled a claim with us. And we were trying to give them back the center and they wouldn't take it back. I think they are quite different.

Q. Regardless of the circumstances, is it true that Brunswick did forgive interest to Pueblo Bowl-O-Mat for a period during which it had not paid?

A. I wouldn't consider the settlement of an important claim for rescission, based on fraud and misrepresentation, in the terms you have used it in your question, sir.

[929]

Q. Did Brunswick relinquish its legal right to claim interest from Pueblo Bowl-O-Mat during the period prior to that settlement that Pueblo Bowl-O-Mat had not been paying?

A. It was a settlement, yes.

Q. Yes.

A. Under the settlement, yes, they waived interest over a period of time.

Q. Do you know when Brunswick repossessed the equipment in Belmont?

A. Yes.

Q. When?

A. I happened to have been there that week and I saw the sign up on the door. It was in April of 1965, I believe.

Q. That's when Brunswick took over the operation, is it not?

A. Yes.

Q. Do you know when the repossession of the equipment took place?

A. I know that Mr. Holt's company was running it right up to the very day that the sign appeared on the door.

Q. Do you know under what kind of arrangements?

A. No, I don't.

Q. Do you know whether any efforts were being

[930]

made by Mr. Holt's company and by Brunswick to work out some kind of a program to save that house for Mr. Holt?

A. No, I don't.

Q. It is true, isn't it, that in Fort Lauderdale, Florida, when you were trying to work out a sale of the Fort Lauderdale Bowl-O-Mat, that also Brunswick withheld repossession action and let you try to work it out?

A. Circumstances were different there, sir. We had already paid a quarter of a million dollars to Brunswick. Brunswick already had all of its money out. They had already realized a significant profit.

Here at Belmont Lanes they didn't receive a nickel for—they received $2,000 in a period of three years.

Q. Is your answer to my question yes or no?

A. I say the facts are different.

• • •

[931]

Q. • • • Now, Pueblo Bowl-O-Mat has lost money, has it not, in each and every year that you have operated it?

A. Yes, sir.

[932]

Q. And I believe you testified on your direct examination that the reason Treadway was keeping it open was that you believed that sooner or later one of its competitors would fold and that would improve the position of Pueblo Bowl-O-Mat, is that right?

A. I had Belmont in mind.

Q. You had Belmont in mind?

A. Yes.

Q. Is it possible that—what is the name of that 32-lane house?

A. Bowlero.

Q. Is it possible that as a result of your doing this it might be Bowlero that would fold?

A. No, I never thought so. One way or another, Bowlero manages to just stay in there.

Q. So then, in effect, you have kept Pueblo open, and paid its losses through the years, looking forward to the day when Belmont would close, is that right?

A. Yes.

Q. And suppose that Belmont, instead of being closed, were to be sold to a new owner, would that mean that all that money you poured into Pueblo Bowl-O-Mat would have been to no avail?

A. Not if we received damages for the period of years

[933]

that Belmont was competing unfairly against us.

Q. From the standpoint of the ability of Pueblo Bowl-O-Mat to make a profit, would its position be improved in any way if it were sold to and operated by someone other than Brunswick?

A. Belmont?

Q. Belmont.

A. Oh, yes.

Q. In what way?

A. As far as we are concerned?

Q. Yes.

A. Yes, I think if an independent proprietor owned Belmont, he would probably raise the price a bit. Of all

the municipalities throughout the country in which we now operate our price per line has been the lowest in Pueblo. It has been primarily because of the competition provided by Belmont. There is very, very active competition between our center and theirs for leagues.

And I think an independent proprietor would probably take a better look and increase his price, and we could increase our price.

That's some of the additional—of course, the A-2 is already in there. So I guess the new proprietor wouldn't take those out, of course.

Q. You mentioned, I believe, that Pueblo is an

[934]

"early to bed" town. What does that mean, in terms of the hours during which league play can be generated there?

A. It is much more difficult, particularly with the other bowling facilities that there are, it is much more difficult to persuade bowlers to come in on the second shift.

Q. What time does the second shift begin?

A. 9:00 o'clock.

Q. At the present time what per cent booked up is your first shift with leagues?

A. Almost 100 per cent.

Q. And about how extensively is your second shift booked up?

A. Pretty empty.

Q. About how many additional leagues could you accommodate in the second shift?

A. Oh, gosh! Probably 90 per cent more than we have. I just would say offhand that our second shift is perhaps booked 10 per cent of its capacity.

Q. So you wouldn't even think of having a third shift?
A. No. Oh, no.
Q. In Pueblo.
A. No, we would be delighted to have two shifts.

The Court: What do you call it, an early to

[935]

bed town?

The Witness: Yes, sir. It's a mill town and people generally get up a little earlier, so they go to bed early.

The Court: Is Paramu[illegible]e to bed?

The Witness: Yes, sir. Actually, sir, in Paramus over the years it has been more difficult to fill the first shift than the second shift.

By Mr. Seeley:

Q. If Belmont Lanes were closed, what percentage would Pueblo Bowl-O-Mat have of the bowling facilities still in operation?

A. Well, we have 40 lanes. Bowlero has 32, Payne has 12 and Park has 10. We would have 40 out of 94.

Q. A little short of 50 per cent, 45 maybe?

A. Yes, just about.

Q. Would you consider, in having 45 per cent of the bowling facilities in Pueblo, that it would give you any power to exclude others from competing there?

A. No.

Q. Would you consider that it would give you any power to determine the prices to be charged for bowling by others there?

A. No, sir; it would determine price in our center. That would be all.

[936]

Q. Just yours?

A. Just ours.

Q. Going back to the time when Belmont Lanes was opened, you first heard about that in about December of '60, was it, '61?

A. No, it was May or June of 1961.

Q. Was it at that time that Brunswick said that we have no intention of putting one in until at least next spring?

A. No, they never qualified it. Jack Thomas and Milt Rudo came to our office in Paterson. I pulled out then the profit and loss figures, and the lineage figures that we had for the nine months of that year. We talked about the significant loss——

Mr. Seeley: Excuse me. Your Honor, I think it has gone far beyond responsiveness.

The Court: Repeat the question and the answer.

(Record read as follows:

"Question: Was it at that time that Brunswick said that we have no intention of putting one in until at least next spring?

"Answer: No, they never qualified it.")

The Court: Period. The rest of the answer will be stricken as not responsive.

[937]

Q. And then when was it after that that you learned that the Belmont center was going ahead, or was going to try to go ahead?

A. I didn't know it was Belmont, sir. I knew that——

Q. A center.

A. A center. It was in November or December of 1961.

Q. Right. And at that time was there any building on what is now the location of Belmont Lanes?

A. No, sir.

Q. Were there builders who had plans for some kind of construction there?

A. I didn't know it at that time.

Q. Well, shortly thereafter did you attend a meeting with representatives of the builder and the banker who was going to finance the affair, and someone representing National Bowling Corporation of Brunswick?

A. There was a meeting. The people you refer to, all those were not present.

Q. Who, of those I mentioned, were not present?

A. I don't recall any banker being at the meeting. Nor do I recall anyone from National Bowling Corporation. I remember a gentleman from Pueblo, who was in the chain and fence business, who was supposed to be the money man behind it. And Bill Blanks was at that meeting, and a young man, a young Tony Bonforte.

[938]

Q. Who is he?

A. He was the son of a building contractor in Pueblo.

Q. And what was your purpose in being present at that meeting?

A. The purpose of the meeting was to try to make interested people in Pueblo aware of the losses that we were already sustaining in our operation; the losses being sustained by the other proprietors in Pueblo, who previously gave the figures to me, so that we might discourage Brunswick from supplying this new installation.

Q. Weren't you also trying to discourage the builders from going ahead?

A. Yes, of course.

Q. And did they listen to what you had to say about bad bowling conditions in Pueblo?

A. The building went up.

Q. Pardon?

A. The building went up.

The Court: They might have listened, but nothing happened, except that the building went up.

Q. You were allowed to tell your story. That's what I mean.

A. Yes.

Q. And in the process of that, did you say

[939]

anything about the survey that Brunswick had made in connection with the proposed new center?

A. I remember I told them I had a letter from AMF, and in AMF's opinion Pueblo could not support another bowling center.

Mr. Seeley: I move to strike that.

The Court: Repeat the question, please.

(Question read as follows:

"Question: And in the process of that, did you say anything about the survey that Brunswick had made in connection with the proposed new center?")

[940]

The Court: So ordered. It will be stricken.

The Witness: Yes.

Q. Did Mr. Blanks say at that meeting that Brunswick agreed to sell the equipment for the new center, but that

if the developers wanted to drop it they would cancel the contract?

A. No.

Q. What, if anything, did he say that you remember?

A. He was very embarrassed for the position that he was in and I was in.

Mr. Seeley: I move to strike that.

The Court: So ordered.

If you don't remember anything, you just say you don't remember.

The Witness: Oh, I remember, sir.

The Court: What?

The Witness: I want to be fair to Bill.

The Court: Who is Bill?

The Witness: Bill Blanks.

He apologized for the position Mr. Milton Rudo had taken and was taking with this new installation in Pueblo.

In his opinion the other lanes should not have gone into Pueblo.

[941]

By Mr. Seeley:

Q. Well, they hadn't yet gone in, had they?

A. No. They shouldn't go in.

Q. Now, then, following that meeting the developers nevertheless did go ahead and build the building, did they not?

A. Yes.

Q. With a provision in it for a bowling center?

A. Yes.

Q. And AMF had told you that it would not supply the bowling equipment, right?

A. They sent me such a letter.

Q. And if Brunswick at your request had said that it would not supply the bowling equipment, wouldn't that mean that the developers would be unable to have a bowling center there?

A. There were some other smaller equipment manufacturers in the country, there was a Bar-Chris, there was another smaller company from Trenton, New Jersey, that supplied lanes, and there was another company in Boston that supplied automatic pinsetters.

Q. Did you ever ask any of them not to supply pinsetters to someone?

A. No.

Q. Why?

[942]

A. Well, they were having financial problems of their own.

I don't think they would have selected the Pueblo market.

Q. Wasn't it your feeling that if you could get both AMF and Brunswick to say that they wouldn't supply pins to somebody, that that somebody had a pretty slim chance of opening up a bowling center?

A. Pinsetters?

Q. Yes.

A. Yes, I'd say that's a fair statement in that area, in Pueblo.

• • •

[943]

Q. Under existing conditions in Pueblo, in your opinion could you get more first shift league business if you had room for it?

A. No.

Q. So that the preference for the first shift insofar as it is now distributed is about what the capacity of your house is; is that right?

A. Yes.

Q. Now, do you know anything about whether the fullness of the first shift and the relative vacancy of second shift in the other centers there is approximately the same condition as you have?

A. Pretty generally, I think that Belmont Lanes has just a little more second shift bowling than we have, but basically, most all of the centers in Pueblo are fully booked on the first shift.

Q. Do you think that if there were additional business which wanted to—which was accustomed to bowling the first shift, that there would be any resistance to try to convert them to the second shift?

A. It depends on how interested they are in continuing to bowl.

[944]

I don't think so, Mr. Seeley, I think if Belmont closed down all but about 10 percent of the bowlers there would find themselves in our center one way or another, or in Bowlero Lanes, or in Park Lanes, or in Payne's Lanes.

• • •

[1017]

Q. In answer to a question by the Court, which I believe was—had to do with Brunswick's cost of its bowling equipment—

The Court: Cobian, Star—

Q. I understood you to reply to the Court that Brunswick got its cost out of the down payment; was that correct?

A. No.

Q. You didn't mean to say that—I mean, excuse me—you did not say that?

A. No.

Q. The down payment under its standard form of contract was $500, was it not?

A. Correct.

Q. You don't mean to say that that was the total cost to Brunswick of the pinsetter?

A. No.

Q. All right.

By the way, the purchase price was $8100 was it not?

A. Yes.

Q. Approximately.

[1018]

And the down payment was $500. That was about a down payment of about six percent, wasn't it?

A. Of cost, or selling price?

Q. Selling price.

A. Yes.

• • •

Q. Mr. Lieblich, I call your attention to a chart which is on an easel at the side of the jury box marked Plaintiff's Exhibit 1.

The Court: P-1.

Mr. Seeley: And I do that for the record. I know that you can see it.

Is that a chart, the purpose of which is to lay in part a foundation for a comparison between a bowling center operated by BCO and a bowling center operated by a proprietor who had

[1019]

purchased his equipment from Brunswick Corporation?

The Witness: Yes.

Q. At the time of PX-1 there is shown, is there not, the basic elements of Brunswick standard forms of lane and pinsetter sale contracts; that is to say, it shows for the pinsetters the price is $8100, the down payment was $500, totalling $7600, the interest factor was 23 percent, amount to $1,748, spread over eight years; is that right?

A. Yes.

Q. Which divided by eight makes $218 of interest per year?

A. Yes.

Q. And likewise, on the lane contract it is shown that the purchase price was $4500, the down payment was 20 percent, or $900, leaving a balance of 36, that the interest factor was 14 and a quarter percent over five years, which amounts to $513, divided by five is $102 per year; is that right?

A. Yes.

Q. All right. Now, is it true that those percentages shown as interest factors represent a calculation as to what six percent interest would be over the period?

A. Yes.

[1020]

Q. And the actual times, the actual years in which any purchaser of Brunswick equipment would be paying that interest under the contract would depend, would it not, upon the year when he purchased his equipment?

A. Or if he subsequently became delinquent.

Q. Well, this chart assumes that he made his payments, does it not?

A. Yes.

Q. And, therefore, if, for instance, a hypothetical Brunswick customer had purchased his equipment in 1960, is it true that by 1965 he would have—in 1965 he would complete his payments of interest on the lanes, and for the next three years he would have his payments of interest on the pinsetter, and at that time he would be finished?

A. Yes.

Q. Now, is it true that the various plaintiff companies here are operating equipment which was purchased from Brunswick new on various days from 1955 through 1961—pardon me, 1951 through 1961?

A. Yes, that's correct.

Q. Do you know from your general knowledge of the industry what period of time, in what period of time were the peak sales of bowling equipment for new

[1021]

installations?

A. 1960, 1961, 1962.

Q. And by 1965 that was a pretty dead business, wasn't it?

A. Yes, very dead.

Q. Next, I would like to call your attention to the items under the word, "depreciation."

No, take that back, strike it.

It is true, is it not, that in the standard forms of Brunswick equipment contracts, that after the down payment was taken off the remaining principal amount owed and the interest or finance charge were added together, and then that was divided into equal monthly payments that stretched throughout the period of the contract?

A. Yes.

Q. And each of those payments combined, did it not, some principal payment and some interest payment?

A. Yes.

Q. Did you ever have occasion to observe from statements of account which your companies received from Brunswick how the payments were divided between interest and principal when they were credited to the payer on Brunswick's books?

[1022]

A. Yes, I think so.

Q. Was that done by taking from each payment first the amount of interest earned up to the time of the payment and then devoting the rest of the payment to reducing the principal amount?

A. Yes, I think their books reflected interest on the unpaid balance.

Q. Yes. So that as these payments were made, assuming that they were made, would it be true that because each monthly principal was somewhat reduced, that out of each payment the amount taken for interest would be a little less, and the amount applied to principal would be a little more?

A. That is a normal amortization arrangement.

Q. That's what is called interest on a declining balance, is it not?

A. Yes, or interest on the unpaid balance.

Q. So would it not be true that as to the pinsetter contract, for example, that the interest collected would be not a level $218 a year, but a figure which started with the first payment higher than that, and gradually decreased until at the end of the period it was a small amount?

A. No.

Q. Why not?

[1023]

A. One, as a matter of bookkeeping, this exhibit is concerned with the amount of cash needed over the five or eight years to pay the debt.

You asked me before did Brunswick have this in equal payments, adding principal and interest together and then dividing by five, and dividing by eight, and I said yes.

Q. You perhaps are anticipating me a little.

I am going to get to the cash need at the bottom of the chart presently.

I am only talking about interest at the moment.

A. My answer was only relating to interest.

Q. I thought your answer related to the amount required each month to pay on principal and interest.

A. But interest is an integral part of that monthly payment.

Q. Yes, I think we agree on that, I hope so.

Now, going to depreciation, will you tell us a little more, if you can, about the investigation which you said that you and your accounting firm made to find out what useful life is used by other bowling companies in depreciating their bowling equipment?

A. Yes. Prior to the years that we had been a public company, and I organized these bowling centers

[1024]

on behalf of my family and my friends and my clients, most of whom were fairly well to do, they were concerned, as many investors are, with the highest possible amount of depreciation.

This is a way to save tax money.

Q. Right.

A. The same rules don't apply to a public corporation as they do to a private investor.

Q. I see.

A. Consequently, after National Bowl-O-Mat became a public corporation I was concerned that we were taking too much of a deduction for depreciation on our books, and we had continued the same rate of depreciation as had been in the hands of our private investors.

So after consultation with our accounting firm, Lybrand, Ross Bros. & Montgomery, we determined to evaluate what a proper rate of depreciation should be for a public corporation.

[1025]

Q. Yes, sir.

A. In order to assist Lybrand, Ross Bros. & Montgomery I wrote in 1961, or early '62, to the president of every one of the public companies whom I knew to ask them what rate of depreciation they were taking and how they arrived at their situation. Answers varied, depending if they had Brunswick equipment or AMF equipment.

After we received all these replies, and Lybrand, Ross Bros. & Montgomery undertook themselves an inquiry, since they had to certify our report, not only to our stockholders but to the Securities and Exchange Commission, we determined that a fair and conservative rate of depreciation which would be proper for our stockholders, proper for the public and proper for the purpose of the Securities and Exchange Commission, would be a composite of 15 years on all of our equipment.

Q. Thank you.

What was the method of depreciation which you and your family and associates, as private investors, had been using prior to that time?

A. I think it was ten years on the pinsetters and 12 years on the lanes.

Q. Straight line?

A. For bookkeeping purposes, yes.

Q. For tax purposes, different?

[1026]

A. Probably double declining.

Q. Sir?

A. Probably double declining.

Q. Double declining. That is a permissible method, is it not, whereby, in effect, the owner assumes that the property depreciates more rapidly at the beginning than it does as it approaches the end of its useful life?

A. It was a method permitted by the Internal Revenue Service to encourage the acquisition of capital items. The government granted an accelerated rate of depreciation on certain items of equipment.

Q. And it is a method which a bowling proprietor could use for his own bookkeeping, if he wished, could he not?

A. Oh, yes.

Q. Without attempting to recall each and every response which you got from the public companies to which you wrote, could you please indicate the various methods of depreciation which were represented by the answers which you received?

A. I really can't remember now, Mr. Seeley, all the replies that we had. But taking them all into consideration, it seems that some were already more or less taken at 15 years. But the 15 years that we and Lybrand

[1027]

determined was appropriate was just about what all these replies seemed to suggest together.

Q. Did any of them say they were taking longer than 15 years?

A. Yes.

Q. Did any of them say they were using the double declining balance method of depreciation?

A. No, I don't think any would have said that.

Q. You spoke of public companies and private investors, sir. Approximately how many bowling centers are there in the United States?

A. I think about nine or ten thousand.

Q. And how many of those bowling centers are operated by public companies?

A. Well, in those days there were more. Quite a few of the chains have gone bankrupt. In those days I think there were about—perhaps 20 to 25 public companies. That may be on the high side, but in that general area.

Q. What would you guess would be the average number of centers that they owned?

A. Well, if we took 25, then I would say 10 or 12.

Q. Thank you.

Now, at the bottom of the chart, cash need—I think you have already said that, but I will repeat it

[1028]

—that represents, does it not, the amount of money each year which the hypothetical Brunswick customer, under these contract terms, would have to pay Brunswick to cover both his principal and his interest payments on the equipment?

A. Yes.

Mr. Seeley: Yes. Now, may I have Exhibit 1A, please.

(Plaintiff's Exhibit 1A exposed on board.)

Q. We are now looking at Plaintiff's Exhibit 1A, are we not, sir?

A. Yes.

Q. And starting at top of the exhibit, under the words "Brunswick's Customers," we see first "Depreciation."

That is the same as we just talked about on Plaintiff's Exhibit 1, is it not?

A. Yes.

Q. And then interest, that also is the same as on Plaintiff's Exhibit 1, is it not?

A. Yes.

Q. Then we come, at the bottom of the page, to "Brunswick BCOD Centers." And we see "Depreciation, $500 per year." That, I understand, you took directly from Brunswick's own records as supplied to you, is that correct?

[1029]

A. Yes. They averaged about $485, so we made it $500.

Q. All right. The depreciation shown under "Brunswick's Customers" is depreciation on equipment acquired when it was new, is it not?

A. Yes.

Q. Do you know whether or not Brunswick in its BCOD centers uses new equipment or used equipment?

A. It was the equipment that was repossessed from the former owners.

Q. Were you acquainted at all with the market for used pinsetters and lanes in 1965 and '66?

A. Yes.

Q. They are advertised by people other than Brunswick and other than AMF, aren't they?

A. Yes.

Q. Do you have any recollection of what the range of market prices was for used pinsetters in 1965?

A. No, I don't offhand. It was less than the price we had paid, certainly.

Q. At any rate, a party acquiring used bowling equipment would not be permitted to take the same amount of depreciation as if it were brand new, would he?

A. No.

Q. Depreciation is something which, however you spread it, it starts out with the value of a piece of

[1030]

equipment when it is acquired, and when you get all through it is down to zeros, or practically zero?

A. My answer wasn't necessarily correct. Really, the purchaser really could continue to take about the same depreciation, if he desired it, because he could take the same theoretical life of 15 years that we had used, and if the equipment was then five years old he could have continued for another ten years. If my arithmetic would be right, I think it would be the same thousand dollars a year for the next ten years.

Q. But am I not correct that, however you do it, the taking of depreciation is something which should start at the value of the equipment when you acquire it and eventually, when you get to the end of the line, you are at zero, is that right?

A. Yes.

Q. So that in theory it means it no longer has any value; it may, in fact, still be useful, but you have written it off as if its useful life were over.

A. Yes, for bookkeeping purposes. Yes.

Q. Right.

And the next line is interest charged by Brunswick. Does that mean that you have learned from the Brunswick documents shown to you that Brunswick Corporation does not charge its BCOD centers any interest?

[1031]

A. From the documents and from the testimony of Brunswick executives.

Q. I don't intend to dispute that. It is correct that they do not.

Now, that is a different thing, is it not, than the question of whether Brunswick is required to pay interest to others?

A. It is concerned only with the facts and figures of the BCOD centers.

Q. And they are different, are they not, from the question of whether or not Brunswick owes interest to others?

A. Brunswick Corporation?

Q. Yes, sir.

A. Yes.

[1032]

Q. Do you know whether or not the Bowling Centers Operating Division is a separate company from Brunswick or part of the same thing?

A. It is a division of Brunswick.

Q. A division. The same corporation.

A. Yes, it is a division of Brunswick Corporation.

• • •

Q. Do you have a copy of Plaintiff's Exhibit 47, Mr. Lieblich, before you?

A. Yes.

Q. That is entitled, is it not, Analysis of Profit or Loss of BCOD centers?

A. Yes.

[1033]

Q. And down the left-hand column are listed by name all of the BCOD centers, and they have numbers, also, right?

A. Yes.

Q. And the next column shows the location of each?

A. Yes.

Q. And then the number of lanes?

A. Yes.

• • •

Q. Opposite the name of each bowling center are two lines of figures under columns headed 1965, '66, '67, '68, up through 1972, is that correct, sir?

A. Yes, except for 1965.

Q. Yes. And what do the figures in the top line show?

A. The results of the profit or loss of the BCOD center that we took from the profit and loss statement of each of these individual companies.

Q. Right. And is it a fact that those, too,

[1034]

do not include any interest charged to BCOD by Brunswick, nor do they take into account at all any interest which Brunswick Corporation may have paid?

A. That is correct. The records that we examined which you gave us, Mr. Seeley, had no provisions for interest on equipment obligations.

Q. I understand that. What do the figures in the second line opposite each name mean?

A. The figures on the second line show how an independent proprietor would have fared, if he would have made a profit or loss, in that same center, using the Brunswick figures, and adding to it the interest and the depreciation that this proprietor would have shown his profit and loss statement.

Q. Yes. Now, is the interest used in calculating the figures on those second lines the same interest which is shown on Plaintiff's Exhibits 1 and 1A?

A. Yes.

Q. So that is interest, is it not, which would begin at whatever time a Brunswick customer purchases equipment and would run from that time in part for five years and in part for eight years?

A. That is the hypothesis, yes.

Q. Would the figures on the second line be dif-

[1035]

ferent for each of the years 1965 through 1972? Withdraw that.

For each of the years 1967 through 1972, if instead of the interest which a hypothetical Brunswick customer owed Brunswick, they were to reflect the interest which Bowl-O-Mat Companies actually owed Brunswick during those years?

A. The hypothesis is based on six percent interest.

Mr. Seeley: Perhaps you didn't understand my question. May I have it read, please.

The Court: Read it.

(The last question was read.)

A. In 1967 the Bowl-O-Mat Companies already paid Brunswick all the money that was due and owing.

Q. Right.

And so is it correct, at least as far as the Bowl-O-Mat Companies go, the figures on the second line would not reflect the fact that the Bowl-O-Mat Companies were all through paying interest to Brunswick?

A. No, that wouldn't be right, Mr. Seeley. The Bowl-O-Mat Companies would have had a larger loss, since, instead of paying Brunswick, we would have to pay banks, and at sometimes a higher-rate than six percent.

[1036]

If you borrow money to pay off Brunswick, you still have the debt. Instead of paying Brunswick we are paying a bank. And we had to pay a higher interest rate than six percent.

[1037]

Q. The interest shown on Plaintiff's Exhibits 1 and 1A is interest payable to Brunswick under a Brunswick equipment contract, is it not?

A. Yes.

Q. But would you say that for the purpose of reflecting real profit or loss, if there were equivalent interest paid to somebody else, that should be taken into consideration?

A. I would say so.

Q. Thank you.

Now I have Plaintiff's Exhibit 48. Would you have that before you, sir?

(Document handed to the witness.)

Q. Plaintiff's Exhibit 48 is entitled, is it not, Analysis of Cash Flow for BCOD Centers?

A. Yes.

Q. And as we just discussed in connection with Plaintiff's Exhibit 47, there are columns on the left with the numbers, the names, the locations of the various BCOD centers and the number of lanes in each?

A. The same as in 47; yes, sir.

Q. And then across the top of the page there are again columns for the years 1965 through 1972?

A. Yes.

Q. And opposite the name of each BCOD center we

[1038]

find, do we not, two lines of figures running across the page?

A. Except for 1965.

Q. Except for 1965?

A. Yes.

Q. And what was the source of the figures on the top line?

A. The Brunswick profit and loss statements of each of its BCOD houses, which you furnished on subpoena.

Q. Right. The figures on the second line don't actually show any analysis of cash flow for BCOD centers, do they?

A. No.

Q. What do they show?

A. It shows the amount of cash that a hypothetical proprietor would have needed to pay his equipment obligations to Brunswick on the number of lanes and pinsetters in this center that were reflected.

Q. Thank you.

And is it true, again, that although this exhibit shows the hypothetical customer paying—for instance, I will take the first one, Interstate Lanes—$80,000 a year for five years and then $47,000 for the next two years?

A. Yes.

[1039]

Q. Is it not a fact that an actual Brunswick customer would have cash needs depending on the date when he bought his equipment from Brunswick?

A. No. There was no variance from the purchase price that you had set as a standard price.

Q. Well, suppose this hypothetical customer purchased his equipment under the standard terms in 1960. Would he have that $80,000 to pay in 1967?

A. If he had been a successful proprietor, and had been able to make all of his payments to Brunswick, then he wouldn't have been in a BCOD situation.

Q. But does not this exhibit assume the operation of BCOD centers by some hypothetical person other than Brunswick?

A. No, we are talking about Brunswick's operation of BCOD centers and what the independent proprietor would have been faced with had he been operating it.

Q. Right.

A. It has nothing to do with a successful proprietor. These are all ones that went bankrupt or were repossessed by Brunswick.

Q. Do not the figures on the second line opposite each name represent the payments made by a proprietor who made them in accordance with his original purchase contract, as shown on Plaintiff's Exhibit 1?

[1040]

A. It doesn't have anything to do with payments made. It reflects payments that he would have to make.

Q. All right. Do not the figures on the second line reflect the payments which an individual proprietor would have to make to Brunswick had he been operating the BCOD center?

A. Yes.

Q. And if the hypothetical operator of that center was using equipment purchased in 1960, would he have to make $80,000 payment to Brunswick in 1967?

A. If he had been able to pay all of his obligations, no, you are right.

• • •

[1041]

The Court: Before we go any further, I just want to clarify this in my mind. That second line of P-48,

that would mean a distressed operator meeting his depreciation costs, and his interest costs, and amortization of principal, as far as pinsetters and lanes were concerned, he would operate at a deficit as compared to BCOD's operation; isn't that what—

The Witness: Essentially, but not depreciation.

[1042]

The Court: Not depreciation.

The Witness: Right.

The Court: Interest cost and amortization of his timely payment for the pinsetters and the lanes.

The Witness: Yes, sir.

• • •

[1051]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Lieblich, just one or two questions about Exhibit 1A—

The Court: Mr. McNeill, may I suggest that you take the map away? Are you going to use it again, Mr. Seeley?

Mr. Seeley: We will not use it again.

The Court: Just to get it out of the way.

Mr. Seeley: Yes, we should.

[1052]

By Mr. Hoffmann:

Q. Just to make this clear, Mr. Lieblich, you have indicated here interest charged by Brunswick, on the bottom, on the BCOD centers, is that right?

A. Yes.

The Court: Referring to what, Mr. Hoffmann?

Mr. Hoffmann: Referring to Exhibit 1A, the bottom part, under the heading, "Brunswick BCOD Centers."

The Court: All right.

Q. And the entry is zero dollars per year, is that right?
A. Yes.
Q. Where did that information come from?
A. From two sources. First, the Brunswick documents themselves; and, secondly, the admissions by the executives of Brunswick Corporation that they don't charge any interest to the BCOD centers.

[1053]

Q. And their own profit and loss sheets do not show any interest charged?
A. That' right.

The Court: Off the record.

(Discussion off the record.)

Q. Now, where on the exhibits, 46, 47 and 48 you show figures in the second line for each center in relation to cash flow for the BCOD centers as they would have been if they had been in the hands of independent proprietors, what are you purporting to show through these exhibits?
A. Well, how much cash the proprietors would have needed to pay the obligations to Brunswick and how much cash there was in the center as Brunswick was operating.
There was often a significant disparity between the two figures.

Q. You are not purporting to show figures which correspond with year in, year out, with the National Bowl-O-Mat figures?
A. No, sir.
Q. And indeed, in 1967 National Bowl-O-Mat had paid off Brunswick entirely, and these figures go on until 1972, do they not?
A. That's right.

Mr. Hoffmann: That's all.

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[1082]

C. VITOLO.

DIRECT EXAMINATION.

The Court: Members of the jury, listen to Mr. Hoffmann for a second, please.

Mr. Hoffmann: Lady and gentleman of the jury, at a previous hearing in this case a witness named Vitolo testified. He is presently unavailable and outside the powers of the court—the court here.

[1083]

He lives in the State of Florida. And that is the reason why he cannot be subpoenaed or presented to you.
So in place of that, with the Court's leave, we are reading the testimony of Mr. Vitolo.

The Court: Proceed, please.

Mr. Hoffmann: One of my colleagues will act as the lawyer and another as the witness.

(Testimony read with Mr. Zucker reading the questions and Mr. Agee making the responses, as follows:)

"Question: Mr. Vitolo, can you tell us your home address, please?

"Answer: 290 Bay Drive, Massepequa, New York.

"Question: Are you appearing here today under the force of a subpoena?

"Answer: I am.

"Question: I show you this subpoena and ask you if this is the subpoena, the form of subpoena that was served upon you?

"Answer: It is.

"Question: Mr. Vitolo, did there come a time in 1965 when you were in this courthouse in Newark on the occasion of the bankruptcy sale of the American International Bowling Corporation?

[1084]

"Answer: Yes, sir.

"Question: Could you tell us approximately when that was?

"Answer: It was either March or April of 1965.

"Question: If I were to tell you that the date was March 2, 1965, would that strike you as approximately the exact date?

"Answer: Approximately, yes, sir.

"Question: Mr. Vitolo, did this bankruptcy sale take place in a courtroom, this courtroom or a courtroom similar to this?

"Answer: Similar to this. I don't know if it was this courtroom.

"Question: And can you tell me approximately how full the courtroom was as of the A. I. B. C. bankruptcy sale?

"Answer: I would say it was anywhere from half to three-quarters full.

"Question: Can you tell us who besides yourself was at the sale that you might have recognized on that day?

"Answer: Well, I drove down with three other gentlemen, a Mr. Ohshan, a Mr. Bloodstein and a Mr. Brown. There were several other people here

[1085]

when we arrived, which we chatted with.

"Question: Can you identify any of the others who were in the courtroom to the best of your recollection?

"Answer: Not at this time. I can't remember their names.

"Question: Do you remember whether Mr. Sidney Friedberg was at the sale?

"Answer: Yes, I am pretty sure he was at the sale.

"Question: Do you know the name of the chain headed by Mr. Friedberg?

"Fairlanes, I believe it is called.

"Question: And was Mr. Friedberg an active bidder at the bankruptcy sale, if you recall?

"Answer: I believe he was.

"Question: Mr. Vitolo, do you know the relative sizes of the chains of Fairlanes and also A. I. B. C. in the bowling center industry as of this time in 1965?

"Answer: I believe they were comparable. They were about the two largest chains that I know of.

"Question: Did there come a time during the bankruptcy sale that you participated in the

[1086]

bidding, sir?

"Answer: Yes, I did.

"Question: Can you tell us about that?

"Answer: Yes, there were many establishments bidded off by a court officer of some kind, and in most cases the bids would start out and somebody would bid on Bobby Brown, who will bid on one establishment, and Brunswick would outbid him, and mostly every establishment was bid off that way. Brunswick outbidded all of them except the one I bid on. I was the successful bidder on the one I bid on, and the only successful bidder.

"Question: Could you tell us the name and location of this center?

"Answer: This center was known as Sunset Lanes in Deerpark, Long Island.

"Question: Do you recall where the bidding started and what price you bid ultimately to get this house?

"Answer: I believe the bids started at $10,000 and Brunswick would go to $11,000, $12,000, $13,000,

$14,000, $15,000. They reached $17,000. I bid $18,000 and then the bids stopped and the Referee, whoever was in charge, told me I was the successful bidder and I would have to put up a

[1087]

certified check for all the money, at which time he would turn over the corporate books to me of the corporation I purchased, and he would telephone the manager at the Sunset Lanes advising him that I was taking over as of that evening at 6:00 p.m.

"I gave him a certified check in full, and they did call the establishment, and he did turn over the books to me, the corporate books, that is, and when I went down there they were expecting me, and I was running the establishment.

"Question: Could you tell us what happened thereafter, Mr. Vitolo?

"Answer: Approximately three or possibly four days later I received a registered letter from the Brunswick Corporation saying that there was an indebtedness of $200,000 on this establishment, and I would have to come up with it, so after receiving that letter I called up a Mr. Bernie Rudo.

"Question: What was your understanding of Mr. Rudo's position as of that time?

"Answer: My understanding of Mr. Rudo's position was that he was in charge of running A. I. B. C. at the time and prior to that.

"Question: And did you understand that he had any function with respect to the Brunswick Cor-

[1088]

poration?

"Answer: At the time, no, he was liaison. I know that he was liaison for Brunswick Corporation. I don't know what function he had, no.

"Question: What did you tell Mr. Rudo?

"Answer: I asked him what the score was on this here, that I had received, and he told me that somehow Brunswick slipped up and down and they intended to buy all the houses, and they didn't know how I got that one, and they would give me a profit to take it back.

"Question: Do you recall whether you or Mr. Rudo suggested the amount of profit?

"Answer: I believe it was Mr. Rudo suggested he would give me $5,000 above my purchase price and I could keep that week's receipts to get out.

"Question: And what did you say, Mr. Vitolo?

"Answer: Well, with that $200,000 staring me in the face, I accepted it.

"Question: Could you tell us what happened thereafter?

"Answer: I got a hold of an attorney at the time, Mr. Olshan, who contacted Brunswick, and they made all the necessary papers and releases, and it was done very, very quickly, within two or three

[1089]

days I had my money and Brunswick had the place back.

"Question: And, to summarize your testimony, is it fair to state that from the time you bid at the sale until the time that Brunswick acquired the center—"

The Court: Reacquired.

Mr. Zucker: It should have been "acquired."

Mr. Hoffmann: Would you read on?

The Court: Mine says "reacquired." Yours says "acquired."

I am not making an objection, I am correcting you. Forget it.

Mr. Hoffman: Following down the page—Why don't you read the whole thing?

Mr. Zucker: It's later corrected to "acquired."

The Court: "And, to sumarize your testimony"—

Mr. Zucker: "And, to summarize your testimony, is it fair to state that from the time you bid at the sale until the time that Brunswick acquired the center no more than a week elapsed?

"Answer: I'm sorry. I don't know the question.

"Question: And, to summarize your testimony, is it fair to state that from the time you bid at

[1090]

the sale until the time that Brunswick acquired the center no more than a week elapsed?

"Answer: Approximately a week, yes, sir.

[1091]

"Question: Mr. Vitolo, are you familiar with Viking Lanes?

"Answer: Yes, I am.

"Question: Could you tell us what they are?

"Answer: It was a forty-lane establishment directly across the street—diagonally across the street from Sunset Lanes. I would say less than a thousand feet away.

"Question: As of March of 1965, did you have any knowledge either way as to whether Viking would or would not close within a few months?

"Answer: No, sir, I did not.

[1092]

"Question: Mr. Vitolo, to your knowledge, did Viking Lanes continue to operate from March of 1965 to the present time?

"Answer: To the present time, no, sir.

"Question: Do you have any knowledge as to when Viking ceased to go out of operation?

"Answer: I believe it was about three months after the date I took over Sunset Lanes, which was March of 1965.

"Question: Do you know what kind of equipment, what kind of pinspotters or pinsetters Viking Lanes had?

"Answer: Viking Lanes was an A.M.F. house, A.M.F. automatics and A.M.F. bowling lanes."

Mr. Zucker: Your Honor, I think that's all.

Mr. Seeley: May Mr. Agee continue to impersonate the witness:

The Court: We will do it completely. Stay there, Mr. Agee.

Mr. McNeill: As was done previously, ladies and gentlemen of the jury, I will also be reading from the transcript from the prior questions.

[1093]

"Cross Examination by Mr. McNeill:

"Question: My name is McNeill and I am one of the attorneys for the Brunswick Corporation. You testified that you were here in the Federal Courthouse in March of 1965 and purchased Sunset Lanes at the bankruptcy sale, isn't that correct?

"Answer: That is correct, sir.

"Question: You purchased Sunset Lanes having full knowledge that Sunset had an outstanding past due obligation to Brunswick in excess of two hundred thousand dollars, didn't you?

"Answer: No, sir.

"Question: Did you have a lawyer here present with you on that day when you purchased the stock of Sunset?

"Answer: No, sir.

"Question: Was Mr. Olshan with you?

"Answer: Yes, sir.

"Question: Was he your attorney?

"Answer: Not at the sale, no.

"Question: How about Mr. Theodore Shrier?

"Answer: No, sir.

"Question: Was he present at that day with you?

"Answer: I don't recall.

[1094]

"Question: Was Mr. Shrier your attorney in March of 1965?

"Answer: Possibly.

"Question: Who is Mr. Theodore Shrier?

"Answer: Mr. Theodore Shrier represented—he's an attorney from a firm known as Simpson-Freeman. He represented Barchris Corporation and he represented myself and two of the gentlemen in some litigation past.

"Question: Mr. Vitolo, are you ever referred to as Elba Vitolo?

"Answer: No, sir.

"Question: Is there a person named Elba Vitolo, as far as you know?

"Answer: No, sir. Elda.

"Question: Who is Elda?

"Answer: My wife.

"Question: Was she here with you on March 26, 1965 at the bankruptcy sale?

"Answer: No, sir.

"Question: Did she have an attorney representing her as far as you can recall at the bankruptcy sale?

"Answer: She definitely did not.

"Question: Mr. Vitolo, do you recall a

[1095]

gentleman named John Monigan, an attorney for Brunswick Corporation from the law firm of Stryker, Tams & Dill being present at the bankruptcy sale proceedings?

"Answer: I can't say that I do, no.

"Question: Do you remember there being some attorney present for Brunswick Corporation?

"Answer: I remember some people representing Brunswick. Whether they were attorneys or not, I wouldn't know.

"Question: You recall the Brunswick representative, one of them, making a statement to all persons present at the bankruptcy sale that there were outstanding debts past due on the part of the various corporations, including Sunset, on March 26, 1965?

"Answer: Some gentleman stated that there were, you are buying the corporation as is and there were debts. None of the amounts were ever stated, no.

"Question: All of the books and records showing, or an accounting—strike that. Let me rephrase my question.

"Financial statements as to Sunset Lanes were available to you at or prior to the sale,

[1096]

isn't that correct?

"Answer: No, sir.

"Question: Did you ever request to see such financial statements?

"Answer: No, I don't recall if I requested it. I can't recall that.

"Question: Did Mr. Shrier on your behalf ask to see the financial statements as to Sunset Lanes?

"Answer: No, but somebody in the group requested it. But they were not available.

"Question: Did you request it of the referee in bankruptcy who had such financial statements?

"Answer: That's whom they requested it from, yes, but there were none available.

"Question: When was this request made, can you recall?

"Answer: I believe it was the day of the auction.

"Question: The bankruptcy proceedings had begun some time the prior year in 1964, had they not?

"Answer: I don't know.

"Question: When did you first become aware

[1097]

that this bankruptcy sale was going to take place, sometime prior to March 26th of 1965?

"Answer: Yes. Mr. Olshan and Mr. Brown advised me of the sale and I should ride out here with them. Other than that I didn't know about it.

"Question: And was that a couple of days, a week or month?

"Answer: I would say about two or three weeks prior to the sale.

"Question: And you took no steps between that point in time when you first heard about this bankruptcy sale and coming over here to ascertain what the financial condition was of Sunset Lanes, is that your testimony?

"Answer: I inquired about it from Mr. Olshan at the time. He didn't have any information to give me because there was none available to him. That's about the extent of my inquiry.

"Question: And yet you bid eighteen thousand dollars for this company at the bankruptcy sale not having seen any books and records?

"Answer: I knew the establishment. That's correct, your answer to your question is correct.

"Question: Without knowing what the outstanding indebtedness was to Brunswick Corporation?

[1098]

"Answer: That is correct.

"Question: And without knowing the extent of the past due delinquent payments to Brunswick?

"Answer: That is correct.

"Question: You bid the eighteen thousand dollars nevertheless?

"Answer: Yes.

"Question: Would it refresh your recollection if I read a portion of the transcript from the proceedings at the bankruptcy sale quoting John Monigan, Brunswick's attorney, concerning Brunswick's position as to the need to require payment for the outstanding obligations from the various bowling center companies that were being sold that day?

"Answer: I don't believe it would, no.

"Question: You don't deny that the Brunswick representative said flatly that Brunswick intended any purchaser of any of the bankrupt houses sold at this bankruptcy sale to make good on the outstanding defaulted obligations?

"Answer: Yes. I knew what the obligations were, yes.

"Question: Was your testimony that within a very short period of time after you were the successful purchaser for the Sunset bowling center—

[1099]

let me interrupt that question and withdraw it, and ask you this: What you purchased was the stock in the corporation that owned the assets of Sunset, isn't that correct?

"Answer: That is correct.

"Question: So you owned the company after the gavel fell and you paid your $18,000, isn't that correct?

"Answer: That is correct.

"Question: And within a short period of time you testified that you received notification from Brunswick that they wanted to be paid the amounts then due and owing by that corporation to them, isn't that correct?

"Answer: They sure did.

"Question: And your testimony, I believe, was that you didn't have—let me ask you that question—

did you have the money? Did you make plans to make those payments due Brunswick?

"Answer: Over $200,000, no, sir.

"Question: So instead you chose to sell the corporation to Brunswick, isn't that correct?

"Answer: Yes, which I sold to Brunswick. They offered to buy and I sold it to them.

[1100]

"Question: You mentioned a figure of $5,000 profit. That never occurred, did it? You sold the center, this bowling center company to Brunswick for $20,000, isn't that correct?

"Answer: I remember $5,000 profit on the transaction.

"Question: Do you recall the monies paid to you by Brunswick for that corporation?

"Answer: Yes. They were paid.

"Question: How much?

"Answer: My $18,000 back and when it was all over I had about $5,000 profit.

"Question: You were paid $20,000?

"Answer: Plus the week's receipts.

"Question: Which netted you a $5,000 profit?

"Answer: I would say so, yes, about.

"Question: You made $3,000 in one week on the company?

"Answer: I didn't have any obligations to pay, any debts, payroll, or anything like that.

"Question: You left the company without having paid for the payroll for that week?

"Answer: With full knowledge of Brunswick, yes.

"Question: Mr. Vitolo, in connection with

[1101]

the bankruptcy sale of other bowling center companies you indicated that there was bidding by others. Did you bid as to any other bowling center?

"Answer: No, sir.

"Question: Do you have any knowledge today—can you recall the exact amounts of any bids made by any company for any of these bowling centers?

"Answer: The exact amounts, no, sir."

WILLIAM EDMUND KENNEY, residing at 27965 Johnson, Grosse Ile, Michigan, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Are you employed?

A. Yes.

Q. What is the nature of your employment?

A. I am regional manager for the Treadway Companies.

Q. What are your functions as regional manager for the Treadway Companies?

A. To supervise several centers in the Midwest area.

Q. How long have you been with the Treadway Companies or its predecessor, National Bowl-O-Mat Companies?

[1102]

A. Just a little over 11 years.

Q. When did you start?

A. March 1962.

Q. Now, Mr. Kenney, what was your first employment at Bowl-O-Mat?

A. I was first hired at Skor Lanes in Detroit, Skor Lanes Bowl-O-Mat, in February or March of 1962, I came to work there as a trainee, to—as a manager-trainee.

Q. Who gave you your employment, do you remember?

A. Yes, sir, I do.

I was first introduced by Jack Klausmeyer, who at that time was the regional supervisor in the Midwest area.

And later, as a matter of fact, a couple of days later, Mr. Lieblich came into town and interviewed me further.

At this time he hired me to come to work at the Skor Lanes, and approximately three days later I started my first day's work.

Q. How did you get to work at National Bowl-O-Mat?

A. In very early 1962, I should say the first part of February, I was looking to change my position, and I—a friend suggested that I stop in and talk to Brunswick, and at the time it sounded rather interesting.

[1103]

So I stopped in a regional office which was located in Royal Oak, Michigan, I believe, and I spoke to a gentleman there, I don't recall his name, and he said at that time they had nothing available, but suggested I could talk to National Bowl-O-Mat Company, and gave me Mr. Klausmeyer's name and address, and of course I contacted him right after that.

Q. And then within a short period of time you saw Mr. Lieblich and were hired?

A. Yes.

Q. Where is Skor Lanes?

A. Skor Lanes is located in Taylor, Michigan.

Q. This is where you worked first?

A. Yes.

Q. For how long were you at Skor?

A. I was at Skor Lanes for approximately three and a half months.

Q. Then what did you do next?

A. At that time, sir, I was asked if I would consider going to Pueblo, Colorado, to be the manager of that particular bowling center.

Q. This is after receiving training at Skor?

A. Yes.

Q. And did you accept?

A. I certainly did.

[1104]

Q. And about when did you start in Pueblo?

A. I arrived in Pueblo, it would have been Memorial Day of 1962, sir.

Q. You remember that day?

A. Very well.

Q. Mr. Kenney, what were your functions, duties, as the manager at Pueblo?

A. Well, sir, as the manager of Pueblo, of course you are responsible for the entire operation, that being the bowling, cocktail lounge, snack bar, all income, promoting the business, securing personnel, setting up budgets, work schedules, and certainly taking care of the property that was on hand.

Q. Was this a new center in Pueblo?

A. No, it was not.

Q. Do you know when it was first opened?

A. I believe it was either late August or very early September of 1960.

Q. It was a going concern, so to speak, when you became manager?

A. Yes, sir.

Q. You seem to have a little bit of hesitancy in answering that.

What caused the hesitancy?

[1105]

A. Perhaps I didn't quite understand. It was open for business.

Q. It wasn't doing too well?

A. No, sir.

Q. Now, can you tell us what centers existed in Pueblo, Colorado, in 1962, bowling centers?

A. Yes. Starting with the one closest to us, would be Payne's Lanes, which was a 12-lane AMF center located on a side street, extremely limited parking, I would say limited facilities, and at the time quite old.

The equipment was very old at that time.

Going north or to midtown area would be Bowlero Lanes, which was located in the second or lower level of a large shopping center.

It was a 32-lane AMF split installation. By that I mean 16 lanes on either side——

Q. May I suggest, with the Court's consent, that you pause until the airplane goes by?

A. To repeat, it was the Bowlero Lanes located in midtown shopping center, it was a 32-lane back to back house, as we call it, 16 lanes on either side, with a concourse and facilities located in between.

And then downtown, directly downtown and slightly west, would be a 10-lane AMF center, the name of that was Park Lanes.

[1106]

It was located right on the main street of downtown, just slightly on the fringe of the downtown area, no off-street parking, very limited, very limited facilities, no cocktail lounge, no snack bar.

The only facilities available in the way of food or beverage would be vending machines, and it, too, was quite old, sir.

Q. And the other ones?

A. Belmont Lanes located in what is known as the Belmont area.

Belmont opened in late August or early September of 1962. It was a free-standing building, meaning that it was completely by itself. It was a very attractive building, 24 lanes of Brunswick equipment.

At the time it had a very nice restaurant, most bowling centers have a snack bar, this had a snack bar and restaurant, I might add.

No cocktail lounge at that time.

And I might say it was just a very attractive center, sir.

Q. Now, were there any other places in which a bowler in the Pueblo area could go to bowl other than the ones you just mentioned in your testimony?

A. Not in that area, no, sir.

Q. Was there bowling in any nearby towns, any-

[1107]

thing of that sort?

A. No, sir, there was not.

Q. Geographically speaking what, can you describe how Pueblo is located?

A. Well, sir, if you go from the extreme north side to the extreme south side it would probably take eight to ten minutes.

If you go from the eastern boundary to the western boundary, you would then require about the same amount of time. It is a very small town.

Q. So all these bowling centers were in a tight compass of time?

A. Yes.

Q. Would you put ten minutes as the outer limit from one to the other?

A. Yes, sir.

Q. If you go outside of the town to the north, what have you?

A. Approximately the closest town north would be about 45 miles, Colorado Springs, about 45-minute drive.

Q. What is to the west of Pueblo?

A. To the west would be the mountains. There are no communities, to my knowledge.

Q. No bowling centers on the sides of the mountains?

[1108]

A. No.

Mr. Hoffmann, I have read some literature to the contrary; Rip Van Winkle.

Q. And to the south?

A. I believe the closest city would be Walsenberg, probably over 100 miles.

Q. And that leaves to the east—

A. Yes. To the east, I can't even recall the closest town.

I was there a long time. It is mostly just prairies.

The Court: How far is Denver from Pueblo?

The Witness: 100 miles north.

Q. Now, for how long a period of time did you manage the center, Pueblo Bowl-O-Mat?

A. Just slightly over six years, sir.

Q. Did you have occasion frequently to see the other centers that you mentioned?

A. Yes, sir, I did.

Q. How would you compare the Pueblo Bowl-O-Mat center with the others?

A. Well, I think the best way to describe Pueblo Bowl-O-Mat, I have looked at a lot of bowling centers throughout the country, I think it was second to none.

It was, first of all, a free-standing building,

[1109]

with 40 lovely lanes in a row, with no obstructions in the building, meaning no pillars, no posts, no columns, and starting at the far end of the concourse we had a very lovely nursery that would accommodate a good many youngsters complete with lavatory facilities, juvenile furniture, and the whole bit that would go along with it.

We had a very large meeting room that we used quite often.

We also had a room for all of the lockers where a bowler could store his ball, bag and shoes when he wasn't using it.

We had a very attractive cocktail lounge and a very fine snack bar, and I might add, sir, that at no time were we ever short of parking.

We had a very large parking lot that was very well lighted at night.

Q. After you became manager of Pueblo Bowl-O-Mat did any new centers in the Pueblo area come into existence?

A. Yes, sir. Just prior to my arriving there on Memorial Day, 1962, ground had already been broken for Belmont Lanes to be constructed.

Q. What was the nature of that center; do you know who owned it?

[1110]

A. Yes, sir. It was built by Mr. John Holt.

Q. What sort of equipment did it have?

A. It was a brand new 24-lane Brunswick bowling center.

Q. When you say "Brunswick bowling center," you mean equipped with Brunswick bowling equipment?

A. Yes, all of the bowling equipment, the pinsetters, the lanes and all of the associated equipment was Brunswick.

Q. And when did the Belmont center in Pueblo open for business?

A. I'm sorry?

Q. I'm very sorry. My tongue was slipping away from me.

When did Belmont Pueblo open for business, if you know?

A. It would have been in either late August or very early September of 1962.

Q. Now, sir, based on your experience as general manager of Pueblo Bowl-O-Mat, did you experience competitively any adverse impact from the opening of the Belmont center?

A. Yes, sir, I did.

Q. And what was that?

A. Well, to the best of my knowledge, to the best I

[1111]

can recall, sir, we immediately lost a 24-team league of five members, meaning 120 bowlers, to Belmont Lanes for the '62 season, and as I further recall, I think we lost also a Triplex league, and I believe at that time I believe the Pueblo Water Board had a league that was bowling.

The Court: What is Triplex?

The Witness: They make pistons. It is a corporation, Triplex Corporation.

I think it is a division of Perfect Circle.

The Court: An industrial league?

The Witness: Yes.

Q. Now, there has been some testimony here that this was a "going to bed early" town, Pueblo.

Does that correspond with your knowledge of Pueblo?

A. Yes, sir, I would say, generally speaking.

[1112]

Q. What do you mean by that, going to bed early town?

A. I think the best way to describe it, sir, unlike many towns where if you happen to be out dining late or seeking entertainment late in the evening, you just don't find it in Pueblo, Colorado.

The Court: You mean like Newark?

The Witness: Do I have to answer that, sir?

The Court: No.

Q. In respect of your leagues of bowling at Pueblo bowling center, what was the most common hour at which league bowling started?

A. That would be considered the early shift, which would be 6:45, sir.

Q. And for how long would a league bowl, if it bowled on the early shift starting at 6:45?

A. Are you talking in terms of hours or weeks?

Q. Time.

A. In time it would be approximately two and a half hours, two hours and 15 minutes.

Q. Until about 9:15?

A. Yes, that would be quite accurate.

Q. And then you have a second shift that starts?

[1113]

A. Supposed to, sir, yes.

Q. At 9:15. Is that the time?

A. That would be the time the second shift would start.

Q. Would the second shift take as long as the first shift to bowl?

A. Most times, yes.

Q. That would bring you to when?

A. Approximately 11:15, 11:30.

Q. Now, in terms of the business which Pueblo Bowl-O-Mat had while you were the manager, how did it divide among the shifts, that is to say, the leagues, were the leagues on both shifts?

A. Yes, sir, they were.

Q. The percentage-wise, if you can remember, how great a percentage of your leagues bowled the first shift?

A. Well, I'd say this. The first shift would be filled Monday through Friday 100 percent.

And the second shift would probably be at that time 10 percent or less.

Q. So that if new leagues came to Pueblo Bowl-O-Mat you would have had lanes to accommodate 90 percent of your second shift, is that right?

A. Very definitely, sir.

[1114]

Q. And the town didn't go to bed quite so early that there were no bowlers on the second shift, is that right?

A. That's right.

Q. Now, can you tell us approximately how many leagues you had at Pueblo at any point while you were managing Pueblo?

A. I suppose the maximum number would be somewhere in the 27 to 30 variety.

Q. How many lanes again did Pueblo have?

A. 40 lanes, sir.

Q. The leagues themselves, can you tell us what the base for them was, where did they come from, what elements of the community?

A. Well, sir, outside of a few industrial leagues which I mentioned earlier, most of the leagues are made up of social clubs, churches, mens' clubs, ladies' clubs, schools; just everywhere the people that were put together, and of course, later became friends and what have you.

Q. Addressing yourself, if you will, please, to the opening of Belmont in 1962, do you have any recollection of losing any leagues at Pueblo Bowl-O-Mat following the opening of Belmont?

A. Yes, I do.

[1115]

Q. Do you know whether or not those leagues were lost to Belmont?

A. Yes.

Q. Can you tell us anything more specific about that; do you know the names of any leagues?

A. Well, the one that I know very well, sir, would be the Pueblo Army Depot, known as PAD, was 24 teams with five men on a team, which would be, of course, 120 total bowlers.

[1116]

To the best of my knowledge, we also lost the Triplex league, and, as I mentioned before, a league from the water board.

Q. Do you have any recollection of the size of the Triplex or the water board league?

A. To the best of my knowledge, sir, the Triplex league, I believe, was a 12-team league of five men each. And if I am not mistaken, the water board was eight teams of five members each.

Q. Leagues consist of a number of teams, is that right?

A. That is correct, sir.

Q. You just mentioned one which had eight teams of five men each.

A. Right, sir.

Q. Is there any group of bowlers, individual open bowlers, who are not referred to as leagues, but nonetheless bowl together?

A. Yes, sir; there are. There are a lot of teams and individuals that migrate from one place to another.

Q. What do you mean by a team?

A. A team, depending on the type of league, can be a five-man team, it can be a four-man team, it can be three men and two women, and various ways that it could be arranged. But, generally speaking, it is either a

[1117]

five-man team or a four-man team.

Q. Do you know whether or not any teams, such as you have just described, went over from Pueblo Bowl-O-Mat to Belmont soon after Belmont opened?

A. Well, I know of several, sir, but one specifically, because I was asked to bowl on it.

Q. Did you do that?

A. Yes, sir; I did, for a good reason.

Q. Are you a good bowler?

A. Sir?

Q. For general information, are you a good bowler?

A. At that time, I would say fair.

The Court: Where did you bowl, Belmont?

The Witness: Yes, sir.

Q. Now, sir, did there come a time when the operations of Belmont changed?

A. Yes, sir; there did. It would be during the month of late March or early April of 1965.

Q. And what was the change?

A. Well, at that time, sir, it was common knowledge that the center was in financial problems, and I went over and checked myself. There was an official notice on the door—and, I am sorry, I don't recall exactly what it said—but I think—I don't even recall that

[1118]

it was closed for any specific time, I think it just changed hands from one day to the next, when the Brunswick Corporation took over the management of the Belmont Lanes.

Q. You said there was an official notice on the door. Con you somehow correlate that with the closing of Belmont; did the notice have something to do with the closing of Belmont?

A. Yes. I'm sorry, I have seen the same type of a legal notice before, many times, and I just don't recall exactly what it said. But it was an official type notice posted on the front door. Perhaps they were closed for maybe an afternoon, or a short period of time, because I know I didn't go inside. So apparently it had to be locked up, for one reason or another.

Q. But whatever the notice said, it conveyed to you the information that Belmont was now closed, is that what it said?

A. Yes, sir; it did.

Q. And then did Belmont reopen later on?

A. Yes, sir; it did. I don't recall the exact date, but it did reopen in that same period of time, late March or early April 1965.

Q. Within a matter of weeks, would you say, a few weeks?

[1119]

A. I don't think it was that long, sir. I think it was a matter of days.

Q. And when it did open, under whose management was it, if you know?

A. It was then under the management of the BCOD, Brunswick Corporation.

Q. When Belmont reopened, under the management of BCOD, did you lose any business to it, any bowlers?

A. I'm sorry, sir. When it reopened?

Q. Yes.

A. Not at that particular time. This was April of 1965.

Q. Did you, later on?

A. Yes, sir; we did.

Q. Did Belmont, in its reopened form, maintain the same equipment which it had earlier, under the prior management?

A. There were no significant changes until the following year, sir.

Q. What year was that?

A. That would have been—I remember it specifically. The announcement that appeared in the newspaper would be July of 1966. I believe there was notice made prior to that, but this was official in the paper at that time.

Q. What was it that was announced in the paper?

[1120]

A. They announced that for the bowlers' convenience that they were now going to install a new A-2 conversion.

Q. What is an A-2, Mr. Kenney?

A. Well, an A-2 is a conversion that is put on an A-1 that enables the machine to operate considerably faster than the previous model, return the ball to a customer faster, enabling a team of four or five members to bowl faster than they had previously.

Q. And does the A-2 create a significant advantage, in your opinion, to the bowling center that uses it?

A. Yes, sir; I think the advantages are really twofold, the main advantage being that a league—pressed for time, to get up in the morning and go to work—they can complete their bowling much quicker than they could on the previous machinery. And a good portion of the information that was passed out at time—that with the use of an A-2 conversion you not only bowl faster, but it is the general consensus that you also bowl better when you do bowl faster.

Q. Your score goes up?

A. Yes, sir.

Q. Now, what, in time, would have been—what was the impact of the A-2 on the time consumed by league bowling, say, in the first shift, did it shorten it?

A. I think, sir, it would shorten the first shift—

[1121]

or the second shift, for that matter—approximately 15 minutes, maybe a little more, 17 minutes.

Q. And then the second shift, if there were an A-2 present, could be starting perhaps nearer to 9:00 o'clock than before?

A. That is correct, sir.

Q. Was that of significance in an "early to bed" town?

A. It certainly would be.

Q. In fact, did you find that after Belmont installed A-2's that you lost leagues at Pueblo Bowl-O-Mat?

A. Yes, sir; I did.

[1122]

Q. Now, sir, do you know the price of an A-2 automatic pinsetter machine?

A. Are you speaking of an A-2 conversion?

Q. No, I am speaking now of a new A-2 machine; do you know the price of it?

A. I would assume, with today's standards, it must be $8700 to $9,000.

Q. Do you know what it was, or approximately what it was, at the time when you managed Pueblo Bowl-O-Mat?

A. Well, an A-1 cost $8100, and I assume at that time an A-2 must have been considerably more than that, sir.

Q. Now, did the A-2 conversion of an A-1 accomplish the same thing as a new A-2 machine would accomplish?

A. Yes, sir; it would.

Q. Do you know the price of a conversion kit for converting an A-1 machine into an A-2?

A. I believe it would run in the vicinity of $1,800 to $2,000 per machine.

Q. And would that have been true during the period of time when you managed Pueblo Bowl-O-Mat?

A. Yes, sir; it would.

Q. Now, how many lanes had Pueblo?

A. I'm sorry, I didn't understand you.

Q. How many lanes were there at Pueblo Bowl-O-

[1123]

Mat?

A. 40 lanes, sir.

Q. Can you do the arithmetic and tell us how much it would have cost to convert the A-1 machines at Pueblo Bowl-O-Mat into A-2's by use of the conversion kit?

A. Approximately 75 to 80 thousand dollars, completely installed.

Q. Did you ask Mr. Lieblich, or other officials of National Bowl-O-Mat, to have the center converted into A-2's in order to meet the competition of Belmont?

A. I am sure I did, sir.

Q. And what was the answer?

A. We can't afford it.

Q. Do you know now whether or not in 1966, July—Pardon me. Did I understand your testimony correctly, that Belmont Bowl-O-Mat announced its conversion in July of 1966?

A. It had been announced previously, sir, but it appeared in the newspaper at that time.

Q. Do you know, as of that time—that is to say, as of July of 1966—whether or not Pueblo Bowl-O-Mat was a profitable operation?

A. It was not, sir.

Q. For Pueblo Bowl-O-Mat, do you know, for accounting purposes, what fiscal year was used?

[1124]

A. Yes, sir; the fiscal year began September 1 and ended on the last day of August.

Q. Can you state from your memory whether or not Pueblo Bowl-O-Mat, in the year ending August 31, 1966, showed a profit or a loss?

A. It showed a loss, sir.

Q. And the next fiscal year, ending August 31, 1967, do you know whether it showed an income or a loss figure?

A. It showed a loss, sir.

Q. Do you have any idea what the amount of that loss was, ending August 31, 1967?

A. In excess of $62,000.

• • •

Q. Now, continuing, Mr. Kenney, how long were you in charge of Pueblo Bowl-O-Mat?

A. Just shortly over six years, sir.

[1125]

Q. Which ended when?

A. It ended approximately April 1 of 1968.

Q. And during the last period you were there, was there still a loss?

A. Yes, sir; there was a loss every year.

Q. Subsequent to your being manager of Pueblo—that is to say, when you changed your position in '68—what was your position, what was your new position?

A. My new position at that time, sir, was regional manager in the Midwest area.

Q. And what bowling centers were included within your scope as regional manager?

A. Minneapolis Bowl-O-Mat, Minneapolis, Minnesota; Saginaw Bowl-O-Mat in Saginaw, Michigan; Skor Lanes Bowl-O-Mat in Taylor, Michigan; Muncie Bowl-O-Mat in Muncie, Indiana; Richmond Lanes in Richmond, Indiana; and Lanecrest Lanes in Franklin, Ohio.

Q. Did your function continue to give you any knowledge or information about how the affairs of Pueblo were going after you left it in 1968?

A. Yes, sir.

Q. Do you know whether or not Pueblo ever showed any net income at the end of the fiscal year?

A. No, sir; Pueblo did not show——

Q. Up to the present.

A. Pueblo has not shown any profit to this date.

[1126]

Q. Coming back again to the period of time when Brunswick began to operate the Belmont center, sometime in 1965—was that March or April, did you say?

A. I believe it was April of 1965, sir.

Q. Now, Mr. Kenney, do you remember any specific league, other than the ones you already testified about, which went over to Belmont, any specific one by name or by its character?

A. I'm sorry, Mr. Hoffmann, I don't believe I understand the date that you are referring to.

Q. I am referring to the point in time when Belmont first began to be operated by Brunswick.

A. Yes, sir.

Q. Is there any specific league that you recall, that you haven't already mentioned in your testimony, which went over to Belmont?

A. None that I haven't already mentioned, sir.

Q. Do you remember any specific league that went over there afterwards, after Brunswick installed the A-2's?

A. Yes, sir; I recall to mind the State Hospital. We had the State Hospital located in Pueblo and they had a league. To the best of my knowledge, it was a 14-team league, and I believe it was comprised of 56 people. They left our center to go to Belmont because

[1127]

of the new A-2 conversions, the time factor.

Q. Now, then, had they bowled the prior season at Pueblo Bowl-O-Mat?

A. Yes, sir; they had.

Q. And how did you know that they left for that reason, that is to say, because of the A-2?

A. Because I asked——

Mr. McNeill: Excuse me, your Honor. If he is going to attempt to testify as to what someone else told him, outside of the presence of Brunswick representatives, it would be hearsay.

The Court: I won't permit hearsay.

Mr. Hoffmann: All I asked him was: How does he know?

The Court: How do you know?

The Witness: I asked them, sir.

Q. Now, did you do any promotional work to bring bowlers into Pueblo Bowl-O-Mat?

A. I would say for almost the entire time that I was there in the six-year period that I spent a minimum of ten hours per week and, in many cases, an entire work week on outside promotion, sir.

Q. Can you give us in more specific terms, I think, what it was that you were doing, how were you trying to promote——

[1128]

A. When I mention an entire work week, I should really be specific and mention a daytime work week. I spent as much as two to three weeks in a row in the public school system teaching youngsters how to bowl. In some cases I had as many as 1500 youngsters that I was giving group lessons to from, say, 8:00 o'clock in the morning until 3:00 o'clock in the afternoon, of course, each one of these being a separate class, with maybe 80-some youngsters in a class, showing them films, and giving them instructions on how to bowl, how to walk with the ball.

Q. And did these efforts actually include going into the schoolhouses for the purpose of instructing the school children?

A. Yes, sir; at that time I spent the first three weeks with the youngsters in the gymnasium, or in the theater when I started showing the films, and then later to the gymnasium, where the actual instruction took place.

Q. Did you continue that school instruction program —if I may call it that—for any length of time?

A. Yes, sir; it continued, that particular program—after my period of three weeks of instruction at the gym were over with—these youngsters were bussed into our

[1129]

bowling center, in our bus, and had enough time on their P.E. class to bowl one complete game, with some further instruction included.

Q. Was the program popular at the school?

A. Very much so, sir, as attested by the amount of youngsters I had in it.

Q. Did there come a point in time when you stopped the program?

A. There came a point in time where the program was curtailed. I won't say that it stopped completely, but it was curtailed.

Q. Tell us about that, please.

A. Well, for a period of years I had a very good rapport with the school system. We ran several "Learn-to-Bowl" classes, not only in South High, but in Central High, Pitts—several of the schools that I had previously—I always had the freedom to go in to the teachers, particularly physical education teachers, and instructors, I had a program laid out in writing, which is what they like, and told them what I wanted to do, how I would like to do it, that I had the approval of the athletic director of that particular school district, and consequently I rarely had any problems.

Q. And did it stop?

A. It was curtailed, sir; not stopped entirely, but

[1130]

curtailed.

Q. Why?

A. About this period of time I would say that we had the bulk of the school, or the "in school" program, as it is referred to. And one of my competitors complained to the school board that he wasn't receiving a fair treatment, that he did not get the same amount of school business that we were able to get.

Q. You say one of your competitors?

A. Yes, sir.

Q. And do you know who that was?

A. At that time, sir, it was Gene Sena, the manager of Belmont Lanes.

Q. Now, Mr. Kenney, based on your experience as the general manager of Pueblo Bowl-O-Mat for six years, 1962 to 1968, can you give us approximately a figure as to the amount of business Pueblo Bowl-O-Mat might have enjoyed had Belmont Lanes been closed down in the middle of 1965 instead of continued by Brunswick?

Mr. McNeill: Your Honor, could we understand that there is a continuing objection to this line of questioning?

The Court: So ordered.

Please answer.

A. Sir, to the best of my calculations, I figured that

[1131]

the bowling income would increase somewhere between 85 and 90 thousand dollars per year.

[1132]

Q. How do you come by those numbers?

A. Well, knowing how many additional bowlers that I could handle, times three games a week, times the length of the season, 33 weeks generally in that area, would give me a certain dollar value, sir.

The Court: You're talking about a fiscal year, 1965?

The Witness: Yes, sir, bowling season, yes, fiscal year.

Q. You are making calculations in your head as to the increased amount of lineage?

A. Yes.

Q. Can you work that out for us in a little more detail?

A. Well, to be specific, sir, I feel that we would get the bulk of the business for the following season, bearing in mind that one of the other centers is a ten-lane center, quite old, limited parking, a second one has 12 lanes, off-street, just off the street, with very limited parking, and league structure being what it is, the advantage of having 40 lanes means we can handle, ten, twelve, fourteen, sixteen, eighteen leagues, where our competitors could not; in other words, if an 18 league was to go to Bowlero, which did have 32 lanes, they would still have to have 16

[1133]

teams bowl on one side of the house and the other two teams would bowl on the other side of the house that was across the concourse area.

The other two smaller competitors could not handle them at all.

Q. Why is that?

A. Because of their limited amount of lanes.

Q. There wouldn't be enough lanes to take care of all of the teams that are bowling in the league; is that right?

A. Yes.

The Court: Why couldn't they bowl on other nights, Mr. Kenney?

The Witness: Well, sir, the number of lanes would not change; in other words, if you had a 16 league bowling on Monday night—

The Court: Why couldn't eight teams bowl on Monday and eight teams bowl on Tuesday?

The Witness: It just isn't done without breaking up the league.

Q. When a league bowls, they all bowl at the same time?

A. Yes, sir. It is a group participation, right.

Q. That's part of the function of league bowling, isn't it?

[1134]

A. Yes, to bowl together.

Q. Now, Mr. Kenney, you have done these calculations and you have come to the conclusion, did you say it would make a difference of $90,000?

A. Yes, I did.

Q. I show you Plaintiff's 53 in evidence and I ask you to address yourself to this line for Pueblo Bowl-O-Mat.

A. Yes.

Q. You see that under, "Additional Annual Bowling Revenues," the entry is made 90,000 to 100,000?

A. Yes.

Q. You corroborate that to the extent that you feel it would be 90,000; is that your testimony?

A. Yes. I was speaking when I mentioned a 60,000 figure, thereabouts, I was speaking Monday through Friday, and of course there are weekend leagues and a great

deal of weekend open play, plus daytime ladies' leagues that we haven't mentioned, and junior leagues.

Q. Well, now, when you make money from bowlers coming into the center and bowling, is money also made in other ways at the Pueblo Bowl-O-Mat center?

A. Yes.

Q. Can you tell us in what ways?

[1135]

A. We have the snack bar where they can have food or a drink, we have the pro shop where they may wish to buy a ball, bag or pair of shoes.

We have vending machines where they may purchase a can of pop.

We have a cocktail lounge where they might enjoy a cocktail or a bottle of beer.

And there are other vending machines such as cigarettes, candy and what have you, where they would also spend additional moneys.

Q. I show you Plaintiff's 9 in evidence, I think we have a chart of this, but it is too hard to turn it over.

I ask you if you will look at the entries on the bottom of Plaintiff's 9.

The Court: I want to alert you, Mr. Hoffmann, we have to stop at a quarter after three.

Mr. Hoffmann: Yes. I think we will finish.

Q. Do you see on the bottom of Plaintiff's 9 which you have in your hand the statement, "For each additional thousand dollars of bowling revenue net income increases"?

A. Yes, I do.

[1136]

Q. And do you notice three percent for shoe rental?

A. Yes, sir.

Q. Does that accord with your knowledge derived while you were manager of the center at Pueblo?

A. Yes, it would.

Q. And would the same go for the other items here, 20 percent for snack bar, 25 percent for bar, 3 percent pro shop and 4 percent for what I alone call mach and misc?

A. I'd have to agree with all of them, sir, including mach and misc.

Q. And then when you—when this, all these calculations, are done, it comes over in this side to $1109; can you tell us what that means?

A. That means for each $1,000 additional of bowling income our net income increases by that amount, sir.

Q. Does that accord with your knowledge and experience as a manager of Pueblo Bowl-O-Mat?

A. Yes, it would.

Q. Now, looking once more at Plaintiff's 53, you testified a moment ago as to your agreement with this column for additional annual bowling revenues?

[1137]

A. Yes.

Q. Now, it is multiplied, is it not, by $1109.

A. Yes.

Q. And that $109 reflects the additions that you have talked about, such as the snack bar and the pro shop?

A. Yes.

Q. The bar, and so on, is that right?

Then, sir, in your opinion and to the best of your knowledge, would you agree with this annual damage figure as found on P-53 for Pueblo Bowl-O-Mat in the amount of $99,810 to $110,900?

A. Yes, sir, I would agree.

Q. And as far as the other figures are concerned, this is a matter of dates and arithmetic; isn't that so?

A. Yes.

• • •

[1140]

CROSS-EXAMINATION (Continued).

By Mr. McNeill:

Q. During what years was it, Mr. Kenney, that you were manager of the Pueblo Bowl-O-Mat center in Pueblo, Colorado?

A. I was the manager of Pueblo Bowl-O-Mat from May of 1962 to very late March of 1968.

Q. Practically six full years?

A. Yes, sir.

Q. And subsequently you have been regional manager for the Midwest for various Bowl-O-Mat centers?

A. That's correct, sir.

Q. And your responsibilities have included supervision of the Pueblo Bowl-O-Mat center as well during this latter period?

A. That is not correct.

[1141]

Q. I see.

How long was it that your responsibilities for Pueblo continued after you left in March 1968?

A. Probably six months, sir.

Q. I see.

Have you had occasion to be in Pueblo since 1968?

A. Yes, sir, I have.

Q. And were they—was that in connection with any responsibilities for Pueblo Bowl-O-Mat?

A. No, sir, it was not.

Q. Or for the parent company?

A. No, sir, it was not.

Q. But you are familiar with the bowling centers operating in Pueblo today, are you not?

A. Yes, sir, I am.

Q. Going back to 1960, I know you weren't manager there at the time, there were three bowling centers operating in Pueblo prior to the opening of the Bowl-O-Mat center; isn't that correct?

A. Yes.

Q. And the largest of those was Bowlero with 32 lanes?

A. That's right.

Q. And that was AMF equipment?

A. Yes.

[1142]

Q. And in the more or less downtown area there was a ten-lane center named Park; is that right?

A. Yes.

Q. And just south of the downtown area there was a 12-lane center named Payne's Lanes?

A. That's right.

Q. And all three of those centers contained AMF pinsetting equipment, did they not?

A. That's right.

Q. And still do?

A. Yes.

Q. And at that time Bowlero's percentage of the lanes being operated was, let's see, 32 lanes of the 54 lanes, total, or greater than half; isn't that correct?

A. Yes, sir, that would be correct.

Q. Now, did Bowlero occupying that position of more than 50 per cent of the lanes have any power to exclude competition from the Pueblo bowling market?

A. No, sir.

Q. Nor, of course, did Payne's or Park Lanes; isn't that correct?

A. That's right.

Q. And in fact that's most clearly demonstrated by the opening of Pueblo Bowl-O-Mat, isn't it?

A. Yes.

[1143]

Q. Prior to the opening of Pueblo Bowl-O-Mat did Bowlero, having more than 50 per cent of the lanes in the town, have the power to fix the prices set by the other two operators?

A. I can't answer that.

Q. After Pueblo Bowl-O-Mat opened its center did Bowlero have the power to set the prices at Pueblo Bowl-O-Mat?

A. Would you repeat that, please?

(Record read.)

A. No, sir, they did not.

Q. Did Pueblo Bowl-O-Mat have the power to set prices at Bowlero or at Payne's or Park?

A. No, they did not.

[1144]

Q. Mr. Kenney, do you agree with the description given the other day by Mr. Lieblich of the conditions at Bowlero—I believe you were in court when he testified—that it is not an attractive center, that it has many, many columns within it, that its snack bar is built very disadvantageously, and that it is a very cramped and very crowded facility?

• • •

A. I would say the description was accurate, sir.

Q. After Pueblo Bowl-O-Mat opened, it was the largest center in Pueblo, isn't that correct?

A. That is correct, sir.

Q. In fact, it was eight lanes larger than its closest competitor in size, namely, Bowlero?

A. That is correct.

[1145]

Q. And it wasn't cramped, and it didn't have columns, it was roomy, and it had an open expanse, as I believe you described?

A. That is correct, sir.

• • •

Q. When you began to manage Pueblo Bowl-O-Mat, did you have an opinion as to whether that center, your center, had any substantial competitive advantages over the other centers in town, first of all, because of its physical appearance?

A. I did.

Q. And what was your opinion, that you had that advantage?

[1146]

A. Yes, sir.

Q. Was there anything wrong in that?

A. No, sir.

Q. That helped you attract bowlers to Pueblo, didn't it, Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. Pueblo Bowl-O-Mat also has a late liquor permit on Sunday, do they not, it can operate after 8 p.m.

A. Not at that time, they didn't, no.

Q. When did they acquire that right, approximately?

A. Allow me just a moment to think about this, please.

(Short pause.)

A. (continuing) That has happened—I beg your pardon, sir. That is correct.

Q. And Belmont, after it opened in 1962, and for many years thereafter, had no such right, isn't that correct?

A. That is correct, sir.

Q. And Pueblo Bowl-O-Mat had at least one school bus that you talked about the other day; did it have more than one?

A. No, sir; it did not, one bus.

[1147]

Q. And you used that bus to help with your "in school" programs that you described?

A. That is correct.

Q. Did Bowlero have such a bus?

A. No, sir; they did not.

Q. How about Payne's, Park or Belmont?

A. No, sir; they did not.

Q. Did Pueblo Bowl-O-Mat—or does Pueblo Bowl-O-Mat have a large meeting room in its facility?

A. Yes, sir; it does.

Q. Do the other centers in town?

A. I can't answer your question in the way that you put it.

Q. Did they, at the time that you left Pueblo, in 1968?

A. I would say with the exception of one center, they did have meeting rooms, yes.

Q. Large meeting rooms, such as the one you had at Pueblo Bowl-O-Mat?

A. Large as—

Q. All right. Did you see anything wrong with the fact that Pueblo Bowl-O-Mat had these various advantages over the other centers in operating Pueblo?

A. No, sir; I did not.

Q. And they were helpful to you in attracting

[1148]

bowlers to Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. Do you know where the bowlers came from that bowled in Pueblo Bowl-O-Mat the first year or two that it was open; in other words, were they people that hadn't ever bowled before, or did they include many bowlers—

The Court: Wait a minute. You have got a triple question there. Repeat it.

(Question read as follows:

"Do you know where the bowlers came from that bowled in Pueblo Bowl-O-Mat the first year or two that it was open")—

The Court: Period. Can you answer that?

The Witness: I can't answer that question.

The Court: What is the next part?

(Question read as follows:

"In other words, were they people that hadn't ever bowled before, or did they include many bowlers—")

The Court: Finish it.

By Mr. McNeill:

Q. —who were bowling up to that point in time at the other centers in town?

[1149]

A. At that time, I can't answer that question.

Q. In 1962, when you started being responsible for developing bowling at Pueblo Bowl-O-Mat, did you attract

any leagues that had previously been bowling at other bowling centers?

A. In 1962 I did not, sir.

Q. What about 1963?

A. Not entirely—not as you have asked the question, no.

• • •

Q. Were you able to attract individual bowlers to bowl at Pueblo Bowl-O-Mat in 1962 and 1963

[1150]

that had prior to that bowled at Bowlero, or Payne's, or Park?

A. In the early—in '62 and '63 I would have to say no to that question, sir; and perhaps in later years, yes.

Q. Mr. Kenney, are you familiar with the amount of bowling business that is being done now by Pueblo Bowl-O-Mat?

A. Yes, sir.

Q. In a general way or rather specifically?

A. In a general way; yes, sir.

Q. And does Pueblo Bowl-O-Mat enjoy business at a rate of approximately nine or 10,000 lines per lane per year?

A. Closer to 9,000, sir, than 10.

Q. And do they have a full first shift?

A. To the best of my knowledge, they do, sir.

Q. And what about the second shift, the later evening shift, about what percentage of their——

A. I don't believe the second shift would be better than 10 percent.

Q. Are you familiar with the amount of business being done now at Bowlero, the same question about league bowling, the first shift and the second shift?

[1151]

A. No, sir; I am not.

Q. What about the business being done at Payne's?

A. No, sir; I am not familiar.

Q. Or Park?

A. No, sir; I am not familiar.

Q. And do you know about the first shift and the second shift bowling at Belmont?

A. To my knowledge, the first shift is completely full; the second shift would be questionable.

Q. You don't know whether they have more or less than 10 percent of their second shift booked?

A. No, sir; I do not.

Q. Do you know what Pueblo Bowl-O-Mat's largest league is at the moment?

A. I assume you mean in regard to teams and members per team.

Q. Yes.

A. To the best of my knowledge, I feel quite certain there is a 20-team league, comprised of five men, which would be 100 people.

[1152]

Q. Are there more than 20—sorry—are there more than two such leagues that have 20 teams or thereabouts?

A. I would doubt that.

Q. And if Pueblo Bowl-O-Mat were to close today do you have any opinion as to whether the 20-league—20-team league you have just described would continue to bowl at one of the other centers in town, quit, or would split up?

A. That's a hypothetical question, sir.

Q. Is it impossible for you to speculate upon that?

Mr. Hoffmann: Your Honor—

(Record read.)

The Court: Do you have an opinion as to that, or no?

The Witness: I feel they would continue to bowl.

Q. You think they would bowl at—try to bowl at Park Lanes?

A. I don't feel that I am in a position to answer that question, Mr. McNeill.

Q. All right. What about at Payne's Lanes, do you have any opinion as to whether they would attempt to bowl at Payne's Lanes?

[1153]

A. No, I do not.

Q. Do you have an opinion as to whether they would attempt to bowl at Belmont Lanes?

A. I am sure they would be interested.

Q. What about Bowlero?

A. I think they would be interested in bowling there, also.

Q. Now, if they'd be interested in bowling at Bowlero, that would mean they'd have to split up in the sense that part of the league would bowl on one side of the house, because they have a maximum of 16 lanes on that side of the house, and part of the league would bowl on the other side of the house; isn't that correct?

A. That's right, sir.

Q. And bowlers sometimes do this?

A. Yes.

Q. In order to bowl together?

A. Yes.

Q. Is that 20-team league a first shift, or a second shift, league?

A. I believe that's a second shift league.

Q. If Pueblo Bowl-O-Mat were to close today, do you have an opinion as to whether they would attempt to obtain a first shift spot in another center, or attempt to find a second shift spot?

[1154]

A. I have reason to believe, sir, they are quite happy at the time spot they are in.

Q. Is the meaning of your answer that, therefore, they would look for a second shift spot at one of the other centers?

A. That's correct, sir.

Q. Do you know how many of the leagues presently bowling at Belmont are composed of more than ten teams?

A. No, I do not know the answer to that.

Q. Does Pueblo Bowl-O-Mat enjoy league bowling from leagues that are composed of less than ten teams?

Mr. Hoffmann: May I hear that question again?

(Record read.)

Mr. Hoffmann: I object to the form of the question.

The Court: Why? He is familiar with ten-team leagues.

Mr. Hoffmann: No. My objection is much more limited than that, just to the word "enjoy."

Does Pueblo Bowl-O-Mat enjoy.

I am not quite sure what it means myself.

The Court: Are they patronizing—

The Witness: I believe your question was, sir, are there many teams—many leagues over

[1155]

eight teams?

Q. Yes, are there leagues at Pueblo Bowl-O-Mat of less than ten teams?

A. Yes, sir, I am sure there are.

Q. Would that comprise at least half of the league business at Pueblo Bowl-O-Mat?

A. I'd be inclined to say no to that.

Q. All right.

Consider the bowling business done at Belmont after it opened in 1963, 1964, 1965.

You were in Pueblo at that time, weren't you?

A. Yes.

Q. And were you generally familiar with the extent to which leagues bowled at Belmont during that time?

A. I would say pretty much so, sir.

Q. Do you know whether they had any leagues of 20 teams or more?

A. I know of one such league, yes.

Q. Do you know of whether half of their business, league business, was of leagues of ten or fewer teams?

A. I wouldn't know the answer to that.

Q. And if Belmont Bowl were to have closed in 1965, in 1965, focusing again on the league business, do you have an opinion as to how many of those leagues

[1156]

would have disbanded at that time?

A. I would have to say less than one league, sir.

Q. And all of the other leagues in your opinion would have wanted to continue to bowl together?

A. Yes, sir, I feel they would.

Q. What about the open bowling at Belmont Bowl during 1965, if Belmont were to have closed do you have an opinion as to the percentage of that business that would

have ceased altogether rather than trying to go to some other center?

A. I would doubt if it would be more than five per cent of the total bowlers.

I don't think it would go that high.

Q. And in 1965 I believe you testified that the early league shift at Pueblo Bowl-O-Mat was full?

A. Yes, sir, it was.

Q. But that there were openings in the second shift?

A. That's right.

Q. And do you have an opinion as to the percentage of first shift league bowlers at Belmont who if Belmont had closed would want to bowl at Pueblo Bowl-O-Mat on the second shift, on a second shift?

A. I'd have to believe, sir, that a very strong percentage of those people could be placed on a second shift.

[1157]

Q. Well, I think the question had to do with how many of them would want to bowl on second shifts.

Can you answer it in that form?

A. No, sir, I can't.

Q. You don't have any opinion one way or the other, then, as to how many of such early shift bowlers in Belmont would want to bowl at a second shift at Bowl-O-Mat?

A. The way you stated your question, I'd have to say no, I do not.

Q. Do you have an opinion, Mr. Kenney, of the overall percentage of bowling business from Belmont, if Belmont were closed in 1965, that would have been placed, to use your phrase, at Pueblo Bowl-O-Mat?

A. I would believe that the percentage would be between 65 and 70 per cent of the total bowlers at Belmont, would come to Bowl-O-Mat.

Q. And bowl just as regularly and just as frequently at Pueblo Bowl-O-Mat?

A. I would have to feel they would.

Q. Even though the only time spot available for early league bowlers would be the late league shift?

A. I have to feel that way, yes.

Q. Finish up at 11:15 or 11:30 at night?

A. That's right.

[1158]

Q. 65 to 70 per cent?

A. In addition to that you are also talking about day league bowlers, which we would have more than sufficient room for.

Q. That's right.

What percentage of Pueblo Bowl-O-Mat's business was derived from league bowlers as opposed to open bowlers?

A. I couldn't answer that question.

Q. Close to 70 per cent?

A. I would think so.

Q. Do you have any opinion as to the percentage of Belmont early shift league bowlers that could find a place at Bowlero on the early shift had Belmont closed in 1965?

A. I'm sure that none of them would be able to find a spot, sir.

Q. And is that because in your judgment Bowlero enjoyed a completely booked full—sorry, completely booked first shift?

A. That's right.

Q. What about Payne's and Park, were they similarly fully booked on the first shift?

A. To the best of my knowledge they were booked 100 per cent on the first shift.

Q. And all of them had openings on the second

[1159]

shift?

A. Very much so, yes.

Q. In fact, none of them probably had more than 10 per cent of their second shift filled up; isn't that true?

A. I think that would be a good estimate.

Q. And yet it is your feeling that 65 to 70 per cent of the early shift bowlers had Belmont gone out of business would indeed bowl on the second shift at Pueblo Bowl-O-Mat?

A. Yes, sir, I do.

Q. Mr. Kenney—by the way, how do you spell your last name?

A. K-e-n-n-e-y.

[1160]

Q. Are you aware of a change in ownership at the bowling center called Bowlero that occurred in 1969?

A. Yes, sir, I am aware of that.

Q. Is it true since ownership did change that Pueblo Bowl-O-Mat in 1969 did not enjoy—strike that—did not have the power to exclude a new owner from the Pueblo bowling market?

The Court: What year is that, 1969?

Mr. McNeill: 1969.

The Witness: Would you repeat that, please?

(Record read.)

The Witness: That's correct.

• • •

[1161]

Q. Did Belmont in 1969 have the power to exclude from the competitive bowling center operating market,

Pueblo, Colorado, a new owner, a new operator, of Bowlero Bowl?

The Court: I will permit it if you say, "in your opinion," based on this man's experience.

Q. I will qualify it with His Honor's suggestion.

The Court: Do you have an opinion?

The Witness: No, they did not.

Q. Mr. Kenney, are you generally familiar with Pueblo Bowl-O-Mat's damages claims in this litigation?

[1162]

A. Yes, sir, I am.

Q. And are you aware of the fact that Pueblo Bowl-O-Mat is claiming damages beginning with the 1963-64 bowling season?

A. Yes, I am.

Q. Do you have Plaintiff's Exhibit 8 handy?

A. Yes, I do.

Q. The top line of that exhibit indicates lineage per lane from Pueblo Bowl-O-Mat's bowling center, doesn't it?

A. Yes.

Q. And focusing on the first year of claimed damages by Pueblo Bowl-O-Mat, and that would be for the 63-64 bowling season or represented by the figures under the column 8/31/64, right?

A. Yes.

Q. Isn't it true, sir, that comparing that season, first year of the claiming of damages, with the previous season, the one ending 8/31/63, that your bowling lineage had gone up some 1,400 lines per lane?

A. That's right.

Q. And nevertheless, Pueblo Bowl-O-Mat is claiming damages for that 63-64 season?

A. That's right, sir.

[1163]

Q. How were you able to build up the lineage from 8300 some lines per lane in one season to 9794 lines per lane the next season?

A. Well, as is usually the case, when a new center opens, the bowlers leave the existing centers because everybody likes to be first in a new center.

And in many cases they come—they become disenchanted, and they come back to where they had originally left from.

And I realize—I feel that in most cases, that's where we picked up that additional lineage.

Q. In other words, for the '63-'64 season you picked up lots and lots of bowlers that had bowled one season at Belmont which you attracted them to Pueblo; is that the sense of your testimony?

A. I don't know what you mean by "lots and lots."

Q. Well, 1400 lines per lane times 40 lanes?

A. That would be the figure then, sir. Lots and lots to me sounds like a lot of people.

Q. But the increase in your business in the '63-'64 season was largely attributable to bowlers coming from Belmont; is that right?

A. I wouldn't say yes to that, no.

Q. Well, then, how would you answer it?

The Court: It is a little confusing to me.

[1164]

The Witness: Yes, sir; it is. I'm not—what I'm saying is not all of those bowlers came back. We did create some new bowlers through our learn-to-bowl program and various promotions.

So it is a combination of bowlers returning to our center along with the promotions that we had going on at the time.

Q. Was there anything wrong with your having persuaded bowlers that once bowled at Pueblo Bowl-O-Mat, subsequently bowled over at Belmont, to come back to Pueblo Bowl-O-Mat?

A. I think the way you put that question, sir, I think it is misleading.

The Court: Now, if you can't answer it, say you can't answer it, please.

The Witness: I can't answer the question.

The Court: Don't rule on the questions.

Q. Wasn't that one of your jobs, to attract bowlers who were bowling at Belmont during the '62-'63 season to come back and bowl at Pueblo Bowl-O-Mat?

A. Yes.

Q. And didn't you do it, weren't you successful?

A. I don't think I was completely successful, no.

[1165]

Q. You were partially successful then, weren't you?

A. Partially, yes.

Q. Was there anything wrong with your being successful to that extent?

A. No, sir.

Mr. Hoffmann: Your Honor, I'd like at least the "anything wrong" part of the question clarified.

Is it morally wrong, or legally wrong? Because if he is asking if it is legally wrong, then, he is not a lawyer, and he is not entitled to that opinion.

If he's asking whether he is morally wrong, maybe we can lay a foundation for the answer by going into the morals of the witness—

The Court: I don't know whether wrong is—is that accepted practice, competitive practice, in your experience?

Q. Let's put it that way. Is it acceptable, competitive practice, from your experience, to attract bowlers from other centers to bowl in your center?

A. Yes.

The Court: And to bring back bowlers that have left your center?

[1166]

The Witness: Yes.

Q. Did I understand your testimony correctly from Friday that going to the year 1965 when Brunswick began operating Belmont, in April of 1965, for the following season, 1965-66, none of the leagues that had been bowling at Pueblo Bowl-O-Mat left to bowl for the '65-'66 season at Belmont?

Mr. Hoffmann: Your Honor, the witness is being asked now as to whether or not the lawyer understood correctly his testimony.

I submit it is not possible for the witness to answer that.

The Court: You testified—

Q. Mr. Kenney, did you testify Friday that none—

The Court: I will sustain the objection, to keep the record in order.

Q. —that none of the leagues bowling at Pueblo Bowl-O-Mat during the '64-'65 season left Pueblo Bowl-O-Mat to bowl at Belmont for the '65-'66 bowling season?

A. That is correct.

Q. Mr. Kenney, looking again at the Plaintiff's Exhibit 8, at the bottom line, which indicates the final income or loss for the operations

[1167]

of the Pueblo Bowl-O-Mat—

Do you have it in front of you?

A. Yes, I do.

Q. And in each instance it was a loss suffered by Pueblo Bowl-O-Mat; is that right?

A. Yes.

Q. At what point in time was it that the A-2 equipment was installed over at Belmont?

A. It would be July of 1966.

Q. So its first competitive impact, if any, in the Pueblo Bowl-O-Mat bowling market would be for the season '66-'67; is that right?

A. That's right.

Q. And is it not a fact that the bottom line figure for Pueblo Bowl-O-Mat Inc. has improved every year following the introduction of A-2's in the Pueblo bowling market? Looking at the '67 figure, '68 figure, '69 and so forth?

A. I don't believe I understood your question, Mr. McNeill.

Would you repeat that, please?

Q. The question is simply, isn't it a fact that after the A-2's were introduced in Pueblo, Pueblo Bowl-O-Mat's bottom line figure improved each year?

A. I can't read my figure on one year, 1969.

[1168]

The Court: Show him the exhibit.

The Witness: Yours is as bad as mine.

The Court: Where is the one that's in evidence?

Mr. Hoffmann: Can I have mine back, please?

A. This one is mine.

The answer to that is yes, sir.

[1169]

Q. Mr. Kenney, did you testify on Friday that, in your opinion, if Belmont had closed, Pueblo Bowl-O-Mat bowling income would increase on a per year basis 85 to 90 thousand dollars per year?

A. Yes, sir; I believe those are the figures I gave on Friday.

• • •

Q. Did you also testify that, in your opinion, $90,000 worth of bowling revenue would come to Pueblo Bowl-O-Mat?

A. I believe that is correct, sir.

Q. And did you testify that, in your opinion, $100,000 per year of bowling revenue per year would come to Pueblo Bowl-O-Mat?

A. I don't believe I testified to that figure, sir.

Q. And do you have an opinion as to whether $100,000 a year of bowling income would come to Pueblo Bowl-O-Mat?

[1170]

A. It's conceivable.

Q. Well, sir, I ask you whether, based on your six years in Pueblo, and your other experience with Bowl-O-

Mat, and other bowling centers, you have an opinion as to whether that would have happened, in fact?

• • •

The Court: Do you have an opinion? Answer yes or no.

The Witness: Yes.

The Court: What is it?

The Witness: I feel that it would, yes.

By Mr. McNeill:

Q. A hundred thousand dollars?

[1171]

A. Yes, sir.

Q. Mr. Kenney, didn't you previously testify, at an earlier hearing three years ago, that, in your opinion, $60,000 of bowling income would have come to Pueblo Bowl-O-Mat had Belmont closed?

• • •

[1172]

A. According to the record, that is correct.

Q. Mr. Kenney, has your opinion changed in the matter?

A. Yes, sir; it has.

Q. And with the benefit of refreshing your recollection as to what you testified to three years ago, what is your opinion today as to the total dollar bowling revenue that would come to Pueblo Bowl-O-Mat if Belmont had closed?

A. I feel that today the amount of money would be in the $90,000 bracket.

Q. If Belmont had closed back in 1963, at the end of the '62-'63 bowling season, and was not in operation during the 1963-64 bowling season, do you have an opinion as to the amount of bowling revenue that would have come to Pueblo Bowl-O-Mat as a result of Belmont closing?

A. No, I do not.

Q. Do you have an opinion as to whether it would be more or less than $60,000?

A. I have a feeling it would be more, sir.

Q. Do you know what the bowling revenue was at Belmont Bowl for the 1965-1966 bowling season?

A. At this time, sir, I don't, no.

Q. Or the '66-'67 bowling season?

A. I have an estimated "guesstimate."

[1173]

Q. And what would that be, sir?

A. I believe at that time it was approximately 120 to 125 thousand dollars.

Q. For bowling lineage, bowling revenue, excluding bar sales, and so forth?

A. Yes, sir; that would be strictly bowling money.

Q. $120,000?

A. That's my estimate, sir, yes.

Q. And do you have an estimate as to what Belmont bowling revenue was for the '71-72 bowling season?

A. I believe, sir, it was about approximately $130,000 for bowling income.

Q. Taking your "guesstimate" of $120,000 as bowling revenue, Belmont in the 1966-67 bowling season, if Belmont had closed at the end of that season, how much, in your opinion, bowling revenue would have gone to Pueblo Bowl-O-Mat?

• • •

[1175]

A. My answer to that would be between 80 and 82 thousand dollars.

Q. And do you base that opinion on some percentage figure that you are applying to the $120,000?

A. Yes, sir; I do.

Q. And the percentage figure that you are applying, sir?

A. Approximately 70 per cent.

Q. And so if you had in front of you the actual bowling revenue figures for Belmont for any given bowling season, in order to form your opinion as to the amount of that business that would in turn go to Pueblo Bowl-O-Mat, had Belmont closed, you would apply a 70 per cent factor?

A. Yes, sir; I believe I would.

Q. What factor would you apply, Mr. Kenney, if you were estimating the percentage of the Belmont business that would go to Bowlero, if Belmont closed?

A. I would say that would be approximately 20 per cent, Mr. McNeill.

Q. And what would happen to the remaining 10 per cent, in your opinion?

A. Well, a small portion of it would have been lost, sir. And a very small portion would be split up between Park Lanes and Payne's Lanes.

• • •

[1200]

MILTON MENDELSON, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Mendelson, where do you live?

A. Norwood, New Jersey.

Q. What is your occupation?

A. I'm the manager of the Paramus Bowl-O-Mat.

Q. Can you tell us a little bit about yourself; where were you born?

A. I was born in New York City.

Q. And where did you live during childhood?

A. Sir?

Q. Where did you live during your childhood?

A. Most of my childhood was spent in Jersey City.

Q. And your education, where was that obtained?

[1201]

A. I graduated Dickinson High School, Jersey City, and from there matriculated at Ohio State University. I graduated in 1933.

Q. Would you be good enough to trace for us what happened to you after you got out of Ohio State?

A. Well, in 1933 we were in the midst of a rather deep depression and college graduates were a dime a dozen, and jobs were not to be found.

After searching fruitlessly for sometime, a friend of mine had a wholesale tobacco business, and he suggested that possibly I might establish a little wholesale tobacco route of my own. And I went into that business.

Unfortunately, I was short of funds and pretty soon my customers had my money and I couldn't pay my bills. So I got out of that business. And from there I went to work for the Brunswick-Balke-Collender Company, as it was known in 1937.

Q. You say as it was known in 1937; what do you mean by, "it,"?

A. Well, the current Brunswick Corporation was known in 1937—the corporate name was the Brunswick-Balke-Collender Company.

Q. Is that the company, the current Brunswick

[1202]

Company, the defendant here; is that the company you are talking about?

A. Yes.

Q. You were employed by the defendant in 1937, is that right?

A. Correct.

[1203]

Q. And in what capacity?

A. I was a sales representative out of the New York office.

Q. Can you tell us about how long you held that position?

A. I held the position of sales representative until 1946–'47. I then became a sales engineer for the same company. And in 1948, I believe, I became sales manager of the New York office. And I held that for one year. In the latter part of '49 I became branch manager of Philadelphia.

Q. What is meant by a branch manager?

A. Well, I was in charge of the operation of the branch, all functions, sales, responsible for making a profit.

Q. Brunswick was not then in the business of operating bowling centers, is that right?

A. No, sir.

Q. So when you speak of being in charge of sales, what are you talking about?

A. Sale of equipment and supplies. I had a staff of salesmen covering the state.

Q. Did that include the sale of pinsetters and lanes, was that part of your function?

A. Well, when I first came into Pennsylvania, we at

[1204]

that time did not have automatic pinsetter, as such. We had pinsetters, but not fully automatic. I believe it was in 1956 that we introduced the first Brunswick automatic pinsetter.

Q. And did you sell lanes in—

A. Yes, we sold new bowling centers, opened up new bowling centers for individual people.

Q. And other equipment for use by bowlers, such as bowling balls?

A. Yes, the complete line of bowling equipment—balls, shoes, bags.

Q. But not the automatic pinsetter, because it didn't exist, is that it?

A. That is correct. We sold a semiautomatic pinsetter.

Q. And then what did you do next?

A. I left Brunswick in 1957, I believe, the latter part of '56, to go into the operation end of the business. I, with some associates, formed a company and opened up a center in south Jersey called Eldorado Lanes. It was a 32-lane center. We had a cocktail lounge, snack bar.

Q. What was it equipped with?

A. We had 32 Brunswick lanes and 32 Brunswick automatic pinsetters, a lovely cocktail lounge, fully carpeted.

[1205]

Q. And after that, what did you do next, in the form of furthering—

A. Well, it was very successful. And from there we opened up—in a joint venture with some other people—a 48-lane center in Philadelphia called Cotton Lanes.

Q. Is it fair to say that you and your joint venturers were in the operating business, is that right?

A. Yes.

Q. How long did you stay in the operating business?

A. Until 1962, I believe.

Q. '62?

A. In 1961 one of my associates and myself sold our interest in both Eldorado and Cotton Lanes and together we purchased an existing bowling center in Philadelphia called Stenton Lanes, a 20-lane center. We purchased the property and the equipment.

Q. Was that a successful adventure?

A. Yes, it was.

Q. How long did you operate it?

A. I was there for a year—approximately a year, year and a half. And I then sold my interest to my then associate. I then went to work—back to work for Brunswick.

Q. In what year did this happen?

[1206]

A. I believe it was in 1962.

Q. And what was your job at Brunswick?

A. I became Director of Operations for their European centers. I was based in Zurich, Switzerland.

Q. You say you were Director of Operations for European centers, for Brunswick European centers?

A. Yes.

Q. Did they have any such?

A. At the time of my arrival in Europe I believe there were four centers in operation. Ostensibly they were building the centers to interest foreign capital in establishing centers in Europe, throughout Europe. And it was necessary at that time to put up pilot centers, so to speak. And there were four in operation.

Q. When you were in charge of these European operations, did your duties include the purchase of equipment for use in these European bowling centers?

A. In the centers that were still not open—and there were a number that I opened while I was over there, like West Berlin, one in France, one in Rome, one other—I was required as—part of my responsibility was to pass on all the equipment going into the centers.

Q. Did you, in the course of discharging that function, learn what the price of a Brunswick automatic pinsetter was?

[1207]

A. Yes, I was familiar with the price of a pinsetter. When I say the price—

Q. What was it in 1962 and '63?

A. I believe the selling price—domestically—was in the vicinity of $7800. I believe somewhere in that vicinity.

Q. If I suggested to you that there is testimony in this proceeding that the pinsetter was sold domestically at $8100, would that change your testimony?

• • •

A. It's very possible that it would have been $8100.

Q. Do you know anything about the manufacturing cost of the automatic pinsetter?

A. I was familiar with the manufacturing cost in Europe. I remember specifically discussing the cost of manufacturing—

Mr. McNeill: Excuse me.

The Court: Just a minute.

Mr. McNeill: I think the witness has answered the question, your Honor.

The Court: Repeat it, Mr. Bremer. What was

[1208]

the answer?

(Record read as follows:

"Answer: I was familiar with the manufacturing cost in Europe. I remember specifically"—)

The Court: No, no. "In Europe"—period. "I remember"—stricken.

By Mr. Hoffmann:

Q. What was the cost?

The Court: In Europe.

Mr. Hoffmann: In Europe.

A. A machine was being manufactured by the Berliner Machine Works in West Berlin and the cost was in the vicinity of $1900.

Q. Did you, in your role as Director of Operations at Brunswick, or in any other way as a Brunswick employee, know what the manufacturing cost domestically for the automatic pinsetter was?

A. I can answer that in this fashion, Mr. Hoffmann, that—

The Court: The question is: Do you know?

The Witness: Yes.

Q. And what was it?

A. Somewhere in the vicinity of $2200.

Mr. McNeill: Your Honor, I move that the answer be stricken as not responsive.

[1209]

Mr. Hoffmann: I beg your pardon.

The Court: Why, Mr. McNeill? He said "somewhere." The fact that he used "somewhere"?

Mr. McNeill: I believe Mr. Hoffmann's question was the manner in which he knew.

The Court: Let's hear the question again.

(Record read as follows:

"The Court: The question is: Do you know?

"The Witness: Yes.

"Question: And what was it?")

The Court: Overruled. Approximately $2100, you say?

The Witness: $2200.

The Court: $2200.

By Mr. Hoffmann:

Q. Now, did there come a time when you left as Brunswick Director of Operations for Europe?

A. Yes.

Q. When was that?

A. 1963.

[1210]

Q. What did you do next?

A. I then came to work for National Bowl-O-Mat Corporation, that is, the current Treadway—

Q. In what capacity?

A. Sir?

Q. In what capacity?

A. As manager of Skor Lanes in Taylor, Michigan.

Q. And Skor Lanes is a—

A. 48-lane center.

Q. I didn't hear you.

A. A 48-lane center.

Q. Is it a plaintiff in this proceeding, do you know?

A. No, sir; it is not.

Q. My question was: Do you know?

Now, Mr. Mendelson, how long did you remain in the capacity of general manager of Skor Lanes?

A. I believe it was a year and a half, approximately a year and a half.

Q. And what did you do after that?

A. I then became a regional manager.

Q. For?

A. For the NBO, as we were known.

Q. What was your region?

A. I covered part of the Midwest; in addition—

[1211]

part of the Midwest was the area I covered for National Bowl-O-Mat.

Q. And did your region remain what you just said, part of the Midwest, or did it—

A. I can be more specific as to exactly where I covered.

The Court: Please, don't volunteer.

Answer the questions.

Q. What was included in the region, Mr. Mendelson?

A. I covered Saginaw, Michigan; Minneapolis, Minnesota; Pueblo, Colorado—

The Court: Indianapolis?

The Witness: No, sir.

A. (continuing)—and Taylor, Michigan.

Q. How long did you function or remain as regional manager for the Midwest?

A. I believe it was for a period just under two years.

Q. When you say the two years, can you be specific—

A. I believe it was until 1967.

Q. And thereafterwards what did you do?

A. I then became director of operations at the home office in Paterson, for all the bowling centers.

[1212]

Q. What was your function as director of operations for the bowling centers?

A. My function was the internal operations of the centers, the promotion of the business for the centers, along with the managers, in conjunction with other people hiring new managers.

Q. Were you supervising the functions of those various centers?

A. Yes. I had a regional manager by the name of Mr. Kenney. Mr. Kenney served under me as a regional manager, working out of Skor Lanes in Detroit, Michigan—in Taylor. That was his base.

Q. Until what year did you stay in this function?

A. For what period of time?

Q. Yes, as the director of operations.

A. Until late '69.

Q. What did you do then?

A. I then resigned and went into the executive personnel business.

Q. What are you doing now?

A. I presently manage Paramus Bowl-O-Mat in Paramus.

Q. So you returned to Bowl-O-Mat?

A. I returned to Bowl-O-Mat; yes, sir.

Q. When did you do that?

[1213]

A. In late 1970.

Q. Now, Mr. Mendelson, with the exception of what you have just said about your executive personnel business, isn't it true that you spent almost all of your adult life in the bowling business, in one form or another?

A. That is correct.

Q. Both with Brunswick and with National Bowl-O-Mat, is that right?

A. That is so, yes.

Q. And also as an independent proprietor?

A. Independent proprietor.

Q. Can you describe the bowling industry, in terms of its economic prosperity as it existed at the time when AMF came out with the first automatic pinsetter?

The Court: Tell the jury when that was, if you know.

Mr. Hoffmann: The mid 1950's.

The Witness: About 1955 I believe they introduced their first automatic pinspotter.

A. The industry at that time—I might describe it by saying it was still in its infancy. It had not reached the proportions that took place after the introduction of the automatic pinspotter. There

[1214]

were a number of very fine centers throughout the country, but it still had not grown in size. And the growth took place after the introduction of the pinspotters—pinsetters.

Q. Well, after the introduction of the pinspotter, was there any marked change in the economics of the industry, as you saw it?

A. Yes. One of the problems that the bowling industry had faced prior to the introduction of the pinsetter, the automatic machine, pinboys—we had pinboys setting pins.

And they were very difficult to secure. It got to the point on occasion where many, many lanes at different times during the evening would be shut because they didn't have adequate help to cover them.

Q. Would you bring your voice up a little bit?

A. Yes. And with the introduction of the machine, this changed the picture completely.

It also changed the picture from the standpoint of the type of investors that began coming into the business. It brought in lots of money into the industry, people with lots of financing, who were willing to invest huge sums and put up very beautiful places.

And as a result of that, the industry expanded very rapidly.

[1215]

Q. When was that period of time that you are describing what might be called a boom period in bowling?

A. I would describe the period from 1956 through 1961, perhaps, or '62, as a boom period, yes.

Q. And then when you get to '61 or '62, what happened?

A. Well, people looked at the bowling business as a "get rich quick" thing and everybody wanted to get into the bowling business. And the manufacturers apparently were very willing to accommodate as many as they could.

And a very severe overbuilding situation took place. Centers were being put up that shouldn't have been put up, with the result that the industry became overpopulated with equipment, facilities.

The Court: Set a time, Mr. Mendelson. '61, '62?

The Witness: From about '60 on I think the situation became very, very critical. And the fruits of it began to develop in '62, when the picture changed drastically.

[1216]

Q. Then when you say it changed drastically, are you referring to a change from the prior—

A. Sir?

Q. Are you referring to a change from the prior boom period?

A. Yes, the business began a downturn. Not so much that the business turned down, it was the fact that the number of bowlers was divided up among too many centers. I would say the popularity of bowling held high, but the amount of equipment available far outstripped the number of bowlers, proportionately.

Q. And from your experience in this industry, can you isolate in some way what you feel was the main cause for this downtrend?

A. I think I just described it. It was an overbuilding in bowling centers.

Q. Overbuilding, is that what you're saying?

A. Yes.

Q. And for how long did this down curve persist, how long did it continue?

A. Well, actually, the downturn existed until possibly late '69, early '70, when we began to see a change, a little improvement.

Q. Do you have any explanation for that change that took place in late '69 or '70?

[1217]

A. Well, in the years between '63 or '62 and '69, there were many, many bowling centers that went out of business, many of them closed up, equipment was taken out, and in many areas they were coming back to more realistic percentages, proportionate to population. And as a result there were many centers beginning to experience improvement in their business, those that stayed in business.

Q. Do you have, from your experience in bowling, any index that you could give us of what you think is a healthy relationship between population and number of bowling lanes in a bowling area?

A. Well, I would certainly say that at a minimum—or a maximum—one lane for every 1500 people.

Q. What does such relationship, one to 1500, mean in your mind, what are you saying about it?

A. That means that one lane—there has to be 1500 people in population to support one lane—not one center, one lane.

Q. And if there are 1500 people to do it, what does that mean in terms of the economic conditions of the bowling centers in the area?

A bowling center should be able to prosper with that kind of a ratio.

Q. Assuming a ratio of 900, or 950 to one

[1218]

lane, is that a relationship which, in your experience, can support a healthy economic bowling—I'm sorry about the sentence—prosperous bowling?

A. From my experience, and in my opinion, I would say that would be an extremely disastrous, unhappy situation.

Q. And if you get to, say, a figure of a thousand to one, is that below a healthy economic relationship between lane and population?

A. I can only answer that, Mr. Hoffmann, by stating that I would not consider going into an area myself, into the bowling business, with a ratio of less than 1500 to one.

Q. You did go in the bowling business, did you not—was that in '58, '59?

A. Yes, sir.

Q. And where was that, again?

A. Pennsauken, New Jersey.

Q. Do you have any recollection of any studies being made at that time which would relate the population of that bowling area to the number of lanes available?

A. In making projections and surveys myself—and it was part of my responsibility, at one time—at that time I believe we were using a ratio of one to

[1219]

somewhere between 2500 and 3,000 population.

Q. Do you have any recollection of the peak of the lineage reached by your bowling center in Jersey in '58, '59?

A. Yes, I was very fortunate. I had a center that was probably one of the highest in the country from the standpoint of games per lane. We were running in the vicinity of 20,000 games a year per lane.

We had over 600,000 lines on 32 lanes.

Q. Does that mean your center was open 24 hours a day?

A. We operated around the clock, never closed the door; yes, sir.

Q. And for league bowling, when was your first shift, Mr. Mendelson?

A. Our first shift was at 6:30.

Q. And your second shift?

A. At 9 o'clock.

[1220]

Q. Was the first shift full, league bowlers?

A. Yes, we were full.

Q. And the second shift, was that full?

A. We were full on the second shift.

Q. Was there yet another shift of league bowlers?

A. We had morning leagues, we had some afternoon leagues, we had midnight leagues.

Q. What about the town in which the center was located, what was the name again?

A. Pennsauken.

Q. Is that a "going to bed early" town, would you say?

A. Well, I wouldn't say it was a "going to bed early" town.

Q. Would you call it a typically "stay up late town, or is it like any other town?

A. Just like most of the towns, there are always a certain number of people in every town that stay up late.

I don't believe it is a "going to sleep" town.

(Discussion off the record.)

Q. Mr. Mendelson, how about your center in Philadelphia, what was its experience in respect of—

A. By the time we opened up our center in Philadelphia, the building of new centers increased very rapidly in the

[1221]

area, and, well, we had a very—while we had a very, very outstanding location, very lovely center, our experience

was not quite as good as it was at the other center in Pennsauken.

We were running about 15,000 lines per lane, which was still a profitable operation.

Q. Do you have any recollection of the relationship between population and lanes there in that bowling area?

A. Well, Cottman Lanes was in the City of Philadelphia itself and we had a rather large population to draw from.

We were in the northeast section of the city, a middle class to above middle class earning area, and there were hundreds and hundreds of thousands of people living in that area.

Q. Well, is there any way of correlating in your mind the population with lanes in terms such as——

A. Yes, I'd say we were well over 3,000 people per lane.

Mr. Hoffmann: Your Honor, could I suggest a very brief recess?

The Court: Sure. Members of the jury, short recess, please.

(Short recess.)

By Mr. Hoffmann:

[1222]

Q. Mr. Mendelson, I show you Plaintiff's Exhibit 1-A, and I state to you that the evidence shows that this exhibit was prepared by Mr. Lieblich and others working with him.

Can you see this first heading, "Brunswick's Customers," and "Depreciation" beneath it?

A. Yes, I can.

Q. Note the heading "Depreciation and Charges for Determination of Net Income by Brunswick BCOD Centers for Pinsetters and Lanes and by Brunswick's Customers."

Do you understand that?

A. Yes, I do.

Q. Now, under "Depreciation for Brunswick's Customers," there is a line that says, "Pinsetter, $8100."

Your testimony, I believe, a little while ago was you thought that the pinsetter sold for perhaps a little less; is that right?

A. I believe I said about $7800.

Q. Well, do you know whether this is a fairly accurate figure, $8100?

A. I would say yes.

The Court: For the purposes of the question you would accept that, right?

[1223]

The Witness: Yes, I will.

Q. All right. With respect to the lane, do you see here the item listed—I'm sorry—at $4500? Do you see this item here?

A. I see it.

Q. How, in relation to that, do you accept that as an averaging of price, fairly accurate picture of the price for a lane?

A. I would say it is a conservative figure.

Personally I sold many lanes for a higher cost than that.

Q. Higher than $4500?

A. Yes.

Q. And then noting the other item, carpet, signs and so forth, $2400, would you say does that look conservative to you?

A. I would say it is conservative, yes.

Q. It then says that the composite useful life of this equipment is 15 years. And so depreciation of $15,000 over 15 years equals $1,000 a year.

What do you have to say about the useful life part of this statement, 15 years?

A. Well, in my opinion, I would give you an example of my own centers, we depreciated for a shorter term than 15 years.

[1224]

I would say it is a very, very conservative figure.

Q. Now, if you were to have depreciated at a shorter term, wouldn't that result in a higher cost item here for depreciation?

A. Yes, sir. Depreciation is a figure that becomes a cost figure on a balance sheet, and as such on a shorter depreciation schedule you would tend to increase your costs, you'd have a greater cost factor.

Q. So that if this had been not 15, but say 10 or some lower term in years then the cost factors would be——

A. Higher.

Q. And indeed, if it were ten years we'd show another 50 per cent, wouldn't we, for depreciation?

A. Yes.

Q. As against the 15 years?

The Court: Why did you say 50 per cent? Why wouldn't it be two-thirds?

Mr. Hoffmann: Yes, 50 per cent, quite so.

Because you are then doing a calculation in which you have as your base for your 100 the 15,000 or $1,000 a year.

Now, if you have that as a base and you say $10,000, you spread over 15 years, you start with—by division—I'm sorry, your Honor is as usual

[1225]

correct. I'm sorry.

The Court: Can't you reduce it to a ten-year item?

Mr. Hoffmann: The figuring I did was wrong in my head. That's not an unusual experience for me.

The Court: You are saying $10,000 at 15 years, right? It is really $15,000 in ten years; is that right?

The Witness: Yes, sir.

Mr. Hoffmann: Thank you, your Honor. I'm sorry. I didn't use this thing that I found

Q. But the effect of it would be——

The Court: You also found the computer in the meantime, right?

Mr. Hoffmann: I say I had it here. I should have used it.

I am not fully with the "now" generation, Judge.

[1226]

Q. Now, but that would have meant that the cost would be higher for the independent proprietor than we indicate on Plaintiff's 1A; is that right?

A. That's right.

Q. Can you conclude, then, from what you have just testified about, that this is a conservative expression of independent proprietors' cost?

A. I would absolutely say yes, it is conservative presentation.

Q. That's true not only because of the obvious 15 year factor, but it is also true, is it not, because your testimony is that the lanes you sold were frequently at a higher price?

A. That is also correct.

Q. Now, addressing your attention to all of this, you note the next heading is for interest.

Do these figures, just looking at them quickly, accord with your own knowledge about the Brunswick customers dealing with Brunswick?

For example, the pinsetter is listed as $1748 over eight years or $218 a year. That's eight years, is what governs the amount per year, is it not?

A. Yes. I believe that's a correct figure.

Q. Do you know where the eight years comes from?

[1227]

A. Well, that was the eight years, was a payout period for pinsetters.

Q. In the contract?

A. Yes.

Q. And the same way down here, five years for—

A. That was the payout period for the lanes.

Q. And the contracts?

A. Yes.

Q. Now, did there come a time, Mr. Mendelson, when you became aware that Brunswick was going into the business of operating bowling centers?

A. I believe it was in 1965, perhaps.

Q. Do you have any recollection of the circumstances which made you aware of that fact?

A. Yes. There was a large chain in existence at the time called AIBC, I believe. They were perhaps the largest chain operated group of centers in the country, and they had gotten into rather difficult straits, and I had heard at the time that Brunswick was then contemplating, they went into bankruptcy, and Brunswick was starting to take some of them over and operate them.

Q. Did you have any other source of information that you can recall which informed you of

[1228]

Brunswick's going into the business of operating bowling centers?

A. Yes. I had made a trip to Pueblo, Colorado, to visit our center in Pueblo, and Mr. Kenney had indicated to me that there were some problems with Belmont Lanes, one of our competitors, and we took a ride over to Belmont Lanes.

And I remember very specifically there had just been a sheriff's notice placed on the door, and somehow or other we got inside the building. There were people doing some rearranging or fixing, and they told us that Brunswick was taking over the operation, and they were going to operate that center.

Q. What did the sheriff's notice indicate?

A. I believe it was the sheriff—notice of sheriff's sale or foreclosure.

Q. And then when you got inside you learned that Brunswick was taking over the center; is that what you testified to?

A. Yes.

Q. When did this happen?

A. Perhaps late 1965 or early 1966. My memory is not clear at the moment.

Q. Do you have any recollection of learning of Brunswick going into the operating business in any

[1229]

other way than the ones you have just described in your testimony?

A. Yes. I was familiar with the center we had in Wappingers Falls called Holiday. There was a Brunswick-

operated center in Poughkeepsie—Dutchess Lanes, that had formerly been owned by a Mrs. Levine, and Brunswick had taken that center over.

Q. Were you familiar with the center when it was operated by Mrs. Levine?

A. I don't believe so, no.

Q. When did you first see it, do you remember?

A. Well, I believe the first time I saw the center was after Brunswick had taken over the operation.

Q. Where was the center in relation to the Bowl-O-Mat center in that area?

A. Oh, I believe less than 15 minutes away on a thruway, they had a new thruway you would take to that center, within 15 minutes automobile ride.

Q. Now, apart from what you have already testified to, that is to say, the Pueblo-Belmont relation, the Dutchess Lane situation in the Poughkeepsie area, did you have any other sources of information—let me change the question.

Did you learn of Brunswick going into the operating business in any way other than what you have

[1230]

already described in your testimony?

A. If I might go back to the previous question for a moment. In addition, of course, we had had a center in Paramus, New Jersey, and still do, and there was a Brunswick-operated center in Fair Lawn.

There was a Brunswick-operated center in Ramsey, there was a Brunswick-operated center in Lodi.

I believe that finishes my—

Q. Did you become familiar with the Bowl-O-Mat operation in Puerto Rico?

A. Yes, I was familiar with our operation in Puerto Rico.

Q. The name of that center was what?

A. You're referring to our center?

Q. Yes.

A. Paradise.

Q. And to your knowledge, did Paradise have any competition in the Puerto Rico area?

A. Yes, we had one other competitor in the Puerto Rico area, in San Juan.

Q. What?

A. A center called Star, Star Bowl, I believe is the correct name.

Q. Do you have any knowledge of the credit practices of Brunswick in relation to the Bowl-O-Mat

[1231]

center, Paradise, in San Juan, Puerto Rico?

• • •

The Court: Answer that yes or no.

A. Yes.

Q. What is your knowledge, what do you know about that?

A. Our center was on a c.o.d. basis. Anything we purchased from Brunswick was on a cash basis.

• • •

[1233]

Q. Mr. Mendelson, I would like to show you Plaintiff's Exhibit 11. There is no number on it, but that is Plaintiff's Exhibit 11. Would you be good enough to address yourself to the top line, the line that says "Bowling."

Are you familiar with the calculations here?

A. Yes, sir.

Q. Would you look along that line, and you notice that in 1968 it shows a bowling income of $148,670, and

then after the addition of shoe rental, and the like, a total of $283,902; do you see that?

A. Yes, I do.

Q. When you go along the line, to 1969, what do you have?

A. Do you want me to read that separately?

[1234]

Q. The top line.

A. $141,620, bowling.

Q. That's only about $7,000 different from the previous year, is that right?

A. That is correct.

Q. And then you go to $165,707 for 1970, is that right?

A. That is correct.

The Court: Will you just clarify it and say you are testifying about Holiday in Puerto Rico?

Mr. Hoffmann: About Holiday Bowl-O-Mat. Plaintiff's 11, which is Holiday Bowl-O-Mat in Wappingers Falls.

Q. Now, Mr. Mendelson, did there come a time when Dutchess Lanes ceased to do business?

A. Yes, I believe in 1969—the end of 1969.

Q. Do you know if anybody took over Dutchess Lanes at that time?

A. No, I believe it was closed up completely.

Q. Do you know if any new center rose up to take its place?

A. No, there was nothing I knew of took its place in the form of a new center.

Q. In that Poughkeepsie market area, do you know whether or not in that area the number of centers are

[1235]

now—compared with 1968—reduced by one, that is to say, reduced by Dutchess?

A. I believe so, yes.

Q. Now, then, would you look to see what happened in 1970 on the bowling line?

A. Did you say 1970?

Q. Yes, 1970.

A. Yes, an improvement in bowling revenues of approximately $24,000.

Q. And that is based, is it not, on a figure which is at August 31, for the fiscal year, is that what this chart reflects?

A. That is correct.

Q. And then you go to 1971. You then have an item of $198,421, is that right?

A. Yes, that is the top line, bowling.

Q. That would reflect, wouldn't it, at least a full year after the closedown of Dutchess?

A. Yes, it would.

Q. Can you compare that with the bowling income for the year before Dutchess closed down? That would be 1968, would it?

A. Additional revenue of approximately fifty-four thousand—$50,000, bowling revenue.

[1236]

Q. Then you go finally to 1972, the top line, which is bowling revenues, as well?

A. $226,122.

Q. And then on the bottom line, where the additions are made for shoe rental, snack bar, bar, and so on, is what in 1972?

Mr. Hoffmann: Can we have P-11, please, is that up?

A. It would be approximately an additional $200,000.

Q. Approximately $200,000 over the pre-Dutchess demise figure; is that right?

A. I'm sorry, I didn't understand the question.

Q. Well, you said the 1972 top line is $226,000?

A. Yes.

Q. The bottom line, $429,348?

A. Yes. The figure I stated was the difference between the 226 and the 429.

Q. Comparing the 429,348 figure now with the figure which reflects the last year in which Dutchess was alive or functioning.

A. That would be 1968.

Q. And the bottom line for 1968 is what?

A. $283,902.

Q. Just roughly doing the arithmetic, about how much of an increase from 1968 to 1972?

[1237]

A. Approximately $146,000.

Q. $146,000 from 1972 to 1968.

How do you account for that increase?

A. There was one less center in the area.

Q. And spelling it out, what happened when there was one less center in the area?

A. Well, the bowlers go the other centers available, they first pick out the best center, and approximately—well, they go some other place to bowl.

Q. And you explain this increase in terms of increased patronage of the Wappingers Falls Holiday Bowl-O-Mat center resulting from the demise of Dutchess; is that what you are saying?

A. Yes.

Q. Now, would you be good enough to look at Plaintiff's 53 in evidence.

Do you see the entry for Holiday Bowl-O-Mat?

A. Yes, I do.

The Court: Give him the court exhibit.

Q. Now, Mr. Mendelson, you see this entry here, the overall entry, "Damages to four of plaintiff's centers"; is that so?

A. Yes.

Q. Now, this entry, "Additional annual bowling revenues," what does that mean, what does that reflect?

[1238]

A. That would indicate the additional revenues that would accrue to Holiday with the closing of Dutchess County—Dutchess bowling center.

Mr. McNeill: Excuse me, before you put another question, Mr. Hoffmann, I might observe that the witness hasn't stated anything about his own opinion as to what business might accrue to Holiday, and the answer——

Mr. Hoffmann: If my dear friend would be patient.

The Court: I think the objection is well taken.

I will permit opinion evidence from this witness based on his experience.

Q. Within your own experience, most of your adult life has been devoted to bowling, what do you think about this figure of 60 to 75 thousand additional bowling revenues for Holiday; is that a figure which accords with

your view as to the additional income to be received on the demise of Dutchess?

A. I would say yes.

Q. Well, in point of fact, if you'd be good enough to look again at the exhibit which shows the reality, not just the suggestion of opinion, it shows more than that, doesn't it, after Holiday retired from the

[1239]

scene—I mean, after Dutchess retired from the scene?

A. Yes, it does.

Q. A good deal more; isn't that so?

A. Quite a bit more, yes.

Q. So then would you say for this damages calculation, in your opinion, isn't that a conservative figure for Holiday?

A. I would say yes, it is a conservative figure.

Q. Now, would you be good enough——

The Court: If you stay to the left perhaps the jury will be able to see the exhibit.

Mr. Hoffmann: Sorry, it is a little awkward, your Honor.

Q. Now, going along this line, this item here, this is the item of net income per thousand dollars bowling revenues, it comes out to $1,328.

You testified about that before the luncheon recess, did you not?

Is it your opinion that that is conservative, or too high?

A. I'd say that's conservative.

Q. And so this is a conservative figure in your opinion; is that right?

A. That's right.

Q. This is a conservative figure?

[1240]

A. Yes, sir.

Q. And then you get a multiple of two conservative figures, and you get some $79,680 to $99,600; is that right?

A. I would say yes.

Q. Now, do you know what this reference here under Number of Years where damages are claimed for Holiday Bowl-O-Mat, first day, 12/10/65——

A. That would be the year that—for the years starting where damages are claimed.

Q. Do you know what the second date is, 8/31/69?

A. That would represent the year that the Dutchess Lanes ceased to exist.

Q. So the figure stops with the end of Dutchess; is that right?

A. Yes.

• • •

[1242]

Q. • • • Now, would you be good enough to take a look at the next entry, which is Paramus.

You are the manager, aren't you, in Paramus?

A. Yes, I am.

Q. By the way, what Brunswick centers again are located near Paramus?

A. We have the center at Bergen Mall, Fair Lawn Lanes, Lodi Lanes, and Interstate Lanes in Ramsey.

Q. Can you tell us approximately how many lanes each of these centers has, do you know?

A. Yes. I believe Bergen Mall has 36 lanes.

[1243]

Q. By Bergen Mall, are you referring to Ten Pin?

A. Ten Pin on the Mall, yes.

Ramsey I believe has 40 lanes. Fair Lawn Lanes, 36—I may be wrong on the 36.

Q. Do you know whether you recall them with any precision; do you have a precise recollection of the number of lanes of the different Brunswick centers that you mentioned?

A. Yes.

Q. You do have?

A. I am not sure about Fair Lawn. I thought it was 36.

Q. How about Lodi?

A. 40 lanes, I believe.

Q. Interstate?

A. 40—Interstate.

Q. Do you know pretty much the distances between Paramus center and these four Brunswick centers you named?

A. Yes, I believe, taking the one that is the longest distance from Paramus, that is approximately seven and a half miles, perhaps. I believe Fair Lawn——

Q. Did you identify that one?

A. That's Interstate Lanes in Ramsey.

[1244]

I believe Fair Lawn Lanes is around three to three and a half miles perhaps.

Bergen Mall or Ten Pins on the Mall would be within a half a mile, and Lodi Lanes possibly just over five miles.

[1245]

Q. Tell me, how long have you been manager in Paramus?

A. Late 1970.

Q. Have you, since that time, experienced competition from these four Brunswick centers that you have mentioned?

A. Yes, I have.

Q. Do you know, or can you remember any specific example of Brunswick competition, since you have been manager of the Bowl-O-Mat center in Paramus, which was particularly hurtful, in the sense of causing Bowl-O-Mat Paramus to lose business?

A. No, sir; I can't name any one specific league, or any specific amount of business.

Q. Do you find that the competition that you do have with Interstate, and with Lodi, with Fair Lanes, is any more intense than with any other center in your immediate market area?

A. Yes, I do.

Q. And what is the reason for that, sir?

A. Well, in the past number of years, they have had some exceptionally effective promotional campaigns. For example, there was a trip to Europe available to those bowlers that bowled in those particular centers.

Q. Why didn't you conduct a trip to E·rope

[1246]

campaign yourself?

A. Well, it is a very expensive promotion.

• • •

Q. I show you Plaintiff's Exhibit 13 in evidence and ask you, if you will, to look at the bottom line.

This exhibit has to do with income and loss of Bowl-O-Mat Paramus, is that right?

A. That is correct.

Q. Looking at the bottom line, do you see—other than for the year 1961, '62 and '64—any positive income coming to Bowl-O-Mat Paramus?

A. No, in every year, with the exception of the three you mentioned, there was a loss.

Q. And going after it, from the last positive year, '64, the loss increases, does it not, through the period '64, '65, '66, '67 and '68, is that correct?

A. That is correct, sir.

[1247]

Q. Then a slight tapering off, if you look at it, for the year 1969, ending the fiscal year August 31, is that right?

A. Correct.

Q. Any explanation for that, for the tapering off?

A. Well, I believe '69 began to show a little—or a general sign of an upturn in the bowling business.

Q. But then the next year is about the same, isn't it, indeed a little bit more in loss, $55,153?

A. Yes.

Q. And finally, you go down a little in '71, and down to $10,542 in '72, is that right?

A. That is correct.

Q. Any explanation for the improvement in the loss in the year ending 8/31/72?

A. Well, I think the general upturn was beginning to gain more momentum.

Q. If you will, would you just quickly take a look here at P-15, which shows the Bowl-O-Mat Paramus figures; do you see here the net income, cost of goods and labor, items down here; then an average figure; does your opinion or knowledge say that those are accurate calculations?

A. Yes.

[1248]

Q. And then quickly going to the bottom of the page, for each additional thousand of bowling revenue, net income increases; it ends—without going through each calculation—ends with $1,140, is that right?

A. That is correct.

Q. Does that accord with your knowledge of the Paramus, New Jersey operation?

A. Very definitely, yes.

Q. Do you have 53 in your hand?

A. Yes, I do.

Q. Would you look at it, please?

Your first column is additional annual bowling revenue for Paramus Bowl-O-Mat. Can you tell us how those additional revenues are calculated?

A. The additional revenues are calculated based on what would happen in the event—for example, in Paramus if Ten Pins on the Mall closed, Fair Lawn Lanes, perhaps, in the case of Pueblo, they would reflect figures in the event that Belmont—

Q. I am talking now only of Paramus.

A. Yes.

Q. This is based on the premise that the Brunswick centers in the competitive market were closed up.

[1249]

A. That would be correct.

Q. And what about the additional annual bowling revenue which that circumstance would afford; in your opinion, is that an accurate estimate of such additional revenue?

A. In my opinion, it is, yes.

Q. Do you know whether that is on the generous or conservative side?

A. That is on the conservative side, sir.

Q. Why do you say that?

A. Well, I believe—apparently Paramus Bowl-O-Mat, in terms of lineage, is doing something in the vicinity of

8900 lines per lane. A good operation, nothing exceptional, would be somewhere in the vicinity of 15,000 lines per year per lane, which means that we would have opportunity to pick up an additional 6,000 lines per lane, or close to it.

If we multiply that by 36 lanes, we would have over 200,000 lines of bowling, additional. And if we take that and multiply it by the average rate, around 63 cents a line, I think we come to that figure, very close to it.

Q. Without doing it exactly—what you are doing is multiplying 63 cents per line by 200,000?

A. Yes.

[1250]

Q. This multiplication would place your figure well above—whatever it might turn out to be—well above 100,000 a year, is that right, and indeed above $120,000?

A. Yes, sir.

Q. Once again for Paramus, $1,140—we went over that before.

A. Yes.

Q. In your opinion, that is not—

A. A reasonable figure.

Q. That is a reasonable figure. And from then on, there is the multiplication, which brings this year to 136, bottom line, 159,000, top line, and then spreading it across the period of claimed damages, eight years, it goes to $109,440, or the larger figure, to $1,276,000.

Address yourself to Pueblo, please. Do you have Plaintiff's Exhibit 8 in your hand, which is the income or loss sheet for Pueblo Bowl-O-Mat?

A. No, I don't.

[1251]

(Document handed to the witness.)

Q. You now have Plaintiff's Exhibit 8 in your hand?

A. Yes, I do.

Q. And that is the income loss sheet for Pueblo Bowl-O-Mat, is that right?

A. That's correct.

Q. Now, just quickly running across the bottom line, which shows income or loss, the bottom line starts with the fiscal year ending 8-31-61, is that right?

A. That is correct.

Q. And it ends with the fiscal year ending 8-31-72, is that right?

A. That's right.

Q. What is the income loss experience; can you give us the general characterization of that bottom line for Pueblo?

Mr. McNeill: Your Honor, the figures speak for themselves. This general impression as to what the bottom line suggests is not going to be competent testimony.

The Court: I will permit him to testify as to the total.

By Mr. Hoffmann:

Q. What is the total?

[1252]

The Court: For that period of time.

A. For the fiscal year ending '72—from 8-31-61—a total of $511,200, loss.

Q. And it's a loss in every year, is it not?

A. In every single year, yes.

Q. Looking again at P-53, damages to centers, additional annual bowling revenues, the last entry here is

Pueblo Bowl-O-Mat. The additional annual bowling revenues is computed at $90,000 to $100,000.

In your opinion, Mr. Mendelson, is that a reasonable or fair figure?

A. In my opinion, it is a reasonable, conservative estimate.

Q. You say conservative?

A. Yes, sir.

Q. Do you have any reason for calling it conservative?

A. Pueblo Bowl-O-Mat had ample facilities available, in the event Belmont closed, to do that kind of business. And based upon the kind of a center Pueblo Bowl-O-Mat represents—it was the outstanding center in Pueblo, it had the best facilities, pretty much centrally located, and would normally get the major share of the business available from the closing of the center.

Q. And this figure of—I'm sorry—this figure

[1253]

of $1,109, the bottom, underneath income per thousand bowling revenues, can you tell us whether or not that is a reasonable figure?

A. I would say it is a reasonable figure, yes.

Q. And then the rest is simply an application of the skill of multiplication. The figure is multiplied, so we have $99,810 to $110,900, the years for which damage is claimed from '63 to 4-1-73, gives a grand total of $964,830 to $1,072,000.

We can do a little more than make assumptions, can we not, as to what happens when the competitive Brunswick center—I'm sorry—when a competitive center closes, is that right?

A. That's correct.

Q. And why do you say that is correct, is it because of something you have already testified to?

A. Well, we have had the experience in Holiday, Wappingers Falls.

[1254]

Q. When you say "the experience," what do you mean?

A. A center did close.

Q. That is Dutchess center?

A. Yes.

Q. And the experience is what you described before in your testimony?

A. Yes, the actual experience, the figures are available.

Q. Now, do you have any knowledge of what has happened in San Juan since Star has closed in terms of the Bowl-O-Mat center there?

A. Yes, there has been a very dramatic increase in revenues.

Q. I address your attention to Plaintiff's Exhibit 21. Do you have that in your hands?

A. No, I don't.

Q. Do you know about when Star closed down?

• • •

[1255]

A. (Continuing.) I believe Star ceased to exist as a going business in October of 1972.

Q. Is this the column which would reflect that?

A. Yes, sir.

No, I am afraid it would not. I believe these figures represent fiscal figures ending August 1972, and Star didn't go out of business officially until October.

The Court: What did you say?

The Witness: They didn't cease existing, they went out of business in October, I believe.

Q. Do you have any knowledge of the condition of Star Bowling during the years ending, fiscal years ending 8/31/71 and 8/31/72?

A. I personally never—I didn't visit Star in the years listed, '71, '72, but I heard from a number of people that it was in horrible condition——

Mr. McNeill: I move that that portion of his answer be stricken. It has to do with hearsay.

The Court: So ordered.

Q. What was your function in 1971 in the Bowl-O-Mat companies?

A. I was manager of Paramus Bowl-O-Mat.

Q. Did you as manager get any regular reports as to the well-being of the other Bowl-O-Mat centers?

[1256]

A. Yes, I would say so.

Q. Can you tell us now whether you have any knowledge derived from within the bowl-O-Mat organization on a recording basis of the earnings of Bowl-O-Mat's Paradise center in San Juan, Puerto Rico, during the period of time just elapsed, the first three months of 1972?

Do you know anything about that?

A. Well, Mr. Davis, the director of operations for the company, we had a discussion, and he did tell me that there was a dramatic improvement in the revenues of Paradise.

The Court: Just a minute. Your adversary is standing.

Mr. McNeill: I move to strike that portion of the answer, which is nothing but hearsay. Whatever Mr. Davis said outside of a representative of Brunswick is hearsay.

The Court: Why should I permit it, Mr. Hoffmann?

Mr. Hoffmann: Your Honor, here is a manager of one of our ten centers. It is suggested by his testimony that he met with Mr. Davis. Mr. Davis is the vice president of the entire operation.

And that he has derived knowledge about the

[1257]

profitability of the other centers.

The Court: From what Mr. Davis told him, but Mr. McNeill does not have the opportunity to cross-examine Mr. Davis.

Mr. Hoffmann: He will have that opportunity before the day is out.

The Court: I will permit it with that representation, or else I will order it stricken.

(Record read.)

The Court: I will let it remain.

By Mr. Hoffmann:

Q. I want you to look once more at Plaintiff's 53. Do you have it in your hand? That's the document entitled "Damages to Four of Plaintiff's Centers."

Addressing yourself to Paradise Bowl-O-Mat, you notice the span of years in which the damages are claimed, this is the next-to-the-last column, number of years?

A. Yes, sir.

Q. Do you notice the last date in which they are claimed?

A. August 31, 1970.

Q. Do you know why our claim for damages for Paradise stops at that date?

A. To the best of my knowledge, at that point Star

[1258]

ceased to exist as a competitor.

Q. How do you square that with which you said a moment or two ago about its final stoppage?

A. Well, there is a—I believe a period between them stopping to exist as a competitor and their actual closing of their doors.

Q. And the actual closing of the doors, your testimony was, took place not long ago; is that right?

A. Yes.

Q. And are you saying by your testimony that during that period from August 31, 1970, to the end of 1972, Star was no longer a meaningful competitor; is that what you said?

A. Yes.

Q. Do you know why that should be so?

A. The center has fallen into such state it no longer was a bowling center in the actual sense of the word.

Q. When you say "fallen into such state," can you explain that any further than just that phrase?

A. Yes. Machines, pinsetting machines weren't operating properly, the lanes were not maintained, the center itself was almost not habitable.

Mr. Hoffmann: Your witness, Mr. McNeill.

• • • •

[1289]

CROSS-EXAMINATION (Continued).

By Mr. McNeill:

Q. Mr. Mendelson, I would like to hand you Plaintiff's Exhibit 1-A for just a moment. The top part

[1290]

of that exhibit, and the bottom part, have entries after the caption "Depreciation," do they not?

A. Yes, sir.

Q. Do you know, sir, whether depreciation is a cash expense or not?

A. No, it is not.

Q. Does Exhibit 1-A, Mr. Mendelson, demonstrate to you any Brunswick BCO advantage in operating a center over Holiday Bowl-O-Mat?

A. My exhibit doesn't show any Holiday listing.

Q. No, it does not. In fact, yesterday you testified that the Holiday had AMF equipment and isn't even a Brunswick customer, isn't that correct?

A. I think I did, yes.

[1291]

Q. So the exhibit has nothing to do with the Holiday Bowl-O-Mat, does it?

A. Not to the best of my knowledge.

Q. What about your prior center named Eldorado? Does this exhibit have any application whatsoever to Eldorado and Brunswick BCO operations?

A. No. In my center I had an interest charge, and my depreciation was higher.

Q. And you purchased the center when, sir, in 1956?

A. In 1956, yes.

Q. And at 20,000 lines per lane the equipment would have been paid for in four years?

A. Approximately four years.

Q. Does this exhibit have any application in Paramus with respect to Mr. Esposito's center containing AMF equipment, just up the street from Paramus Bowl-O-Mat?

A. Insofar as Mr. Esposito has AMF equipment, in that regard it wouldn't. What Mr. Esposito's accounting practices are, I don't know.

Q. Mr. Mendelson, how long were you an employee of Brunswick when you were over in Zurich, I believe you testified?

A. From approximately August through the end of May

[1292]

or June 1963, 1962, 1963.

Q. From August, approximately, 1962, to May-June 1963?

A. Yes.

Q. Then you rejoined Bowl-O-Mat?

A. Not immediately. I rejoined—I didn't rejoin Bowl-O-Mat. I originally joined Bowl-O-Mat in August of 1963.

Q. So you were with Brunswick at that time for approximately 10 months?

A. Um hum.

Q. Were you let go by Brunswick on that occasion?

A. No, sir.

Q. What were the circumstances of your termination?

A. We had a friendly termination, difference of opinion, and I resigned.

Q. You testified the other day about the manufacturing costs of Brunswick's automatic pinsetting machines?

A. Yes, I did.

Q. And you indicated that there was a cost of $1,900 for a machine manufactured in Berlin, I believe?

[1293]

A. That's correct.

Q. To your knowledge, did any foreign made automatic pinsetters manufactured in Berlin ever enter the American bowling market?

A. Not to the best of my knowledge, no.

Q. With respect to domestic United States manufacture of Brunswick automatic pinsetters, your testimony was that the manufacturing costs was $2200?

A. Approximately $2200.

Q. What does that mean, manufacturing costs?

A. The cost of the machine, to put the machine together, and the Brunswick cost from the standpoint of material and manufacture.

Q. Are you an accountant, sir?

A. No, I am not.

Q. Have you ever been employed in the Brunswick Accounting Department?

A. No, I have not.

Q. Or the Bowl-O-Mat Accounting Department?

A. No, I have not.

Q. Do you know whether the manufacturing costs that you are talking about includes such expenses as warehousing or transportation?

A. No, I don't.

Q. I'm sorry, what does your answer mean;

[1294]

does it mean that the manufacturing cost you gave us does include it, or does not include it, or you don't know whether it includes it?

A. I don't know whether—I don't know if it would include it.

Q. What about the cost of installation, for example, the cost of installing pinsetters in your Eldorado center, is that cost of Brunswick included in the $2200 figure?

A. No, I believe I stated the manufacturing cost, not installation.

Q. So then it wouldn't include the initial adjustment costs or servicing costs either, would it?

A. No, it would not.

Q. Nor would it include Brunswick's research and development costs or engineering costs?

A. I wouldn't think so, no.

Q. Nor would it include sales and promotional costs, would it?

A. No, it would not.

Q. Or the general corporate servicing costs, costs for the accounting department, the legal department, the credit department, and so forth?

A. I couldn't answer that. I wouldn't know.

Q. Do you know, sir, whether that 22 figure

[1295]

reflects any costs on the money Brunswick borrowed in order to be in the bowling business?

Mr. Hoffmann: Your Honor, I am going to object to further questions along this line.

The witness—the line was started by the witness saying he doesn't know about these costs.

Now, Mr. McNeill asks as to specific items does he know about each one of these items, was it included or was it not?

Obviously, the answer includes the answer to all of the questions which follows.

It seems to me this is not cross-examination, it is just an effort to try to suggest to the witness that he doesn't know anything at all.

He said he doesn't know whether it is included in the manufacturing cost.

The Court: Except in direct examination he stated the manufacturing cost was $2,200, I believe.

Mr. Hoffmann: Yes, but he said now on cross that he doesn't know whether these various items which Mr. McNeill mentioned are included or not.

He said, "I don't know," in answer to a

[1296]

broad question which started the line.

Now, Mr. McNeill could go on all day asking him whether or not the cost of sponging the floors of Brunswick are included, whether the cost of research and technology for Brunswick surgical instruments are included, and so on, but he just doesn't know, he said so.

Mr. McNeill: With great respect, I think this is certainly proper cross-examination. Mr. Hoffmann, for whatever reasons, had this witness speak as to the cost of a Brunswick automatic pinsetter, and I am certainly entitled to find out what he knows about the manufacturing costs, this sales costs, and all of the other costs.

He has said in answer to my questions that he knew that the $2200 figure did not include many of the costs I asked about.

I am through with this line of questioning, as a matter of fact, but I think it is perfectly proper to inquire and to let the jury and this Court know precisely what is not included in that figure.

The Court: I will permit it. Proceed.

Q. Mr. Mendelson, you are quite familiar with the Paramus Bowling market, are you not?

[1297]

A. Yes, sir.

Q. Are you familiar with the center named Montvale, Montvale Lanes?

A. Very, very vaguely. Montvale would not be what I would consider the trading area that we are in.

Q. You think that in your opinion Montvale is outside of your market area?

A. I believe so, yes.

Q. Is it closer, or further away, from your center than Lodi Lanes?

A. I would say it is further than Lodi.

[1298]

Q. Is it closer, or further, from your center than Interstate Lanes in Ramsey?

A. Might be very close to the same distance.

Q. Do you know whether Montvale has A-2 fast return equipment?

A. I don't know that.

Q. Do you know the center named Lucky Strike in Emerson?

A. Yes, I have been in Lucky Strike.

Q. Do you consider that competitive with your bowling center?

A. No.

Q. Is that further away than Interstate from your center?

A. Possibly about the same distance.

Q. And do you know whether or not Lucky Strike has A-2 equipment?

A. I don't know.

Q. What about Martone's lanes, do you consider that bowling competitive to yours?

A. Yes, I would.

Q. And do you know whether that center has A-2 equipment?

A. I don't believe it has.

Q. Mr. Mendelson, you testified the other day

[1299]

concerning a promotion prevalent at the BCO houses in your market area involving a bowler's trip to Europe, did you not?

A. Yes.

Q. Can you name any bowler, bowlers, teams of bowlers, or leagues, which your center has lost to a Brunswick operated center because Brunswick had this bowl to Europe promotion?

A. No, I can't specifically name any one bowler or league.

Q. Have you lost any leagues for that reason?

A. Not to the best of my knowledge.

Q. Do you have any knowledge as to the expense to Brunswick for running that promotion?

A. No, I wouldn't be—I would have no information on that.

Q. Do you know how many how many bowlers end up going to Europe from the entire United States?

A. No, my memory serves me, it is possibly three or four, perhaps.

Q. If I suggested two, would that accord with your memory?

A. It could be correct.

Q. Mr. Mendelson, in the face of this Brunswick promotion, the Bowl-Your-Way-to-Europe, that occurs in

[1300]

Ten Pins and Fair Lawn, have you over the past year been able to build up the business at Paramus Bowl-O-Mat?

A. I would say I have been able to increase dollar volume, yes.

Q. Almost $50,000 last year, didn't you?

A. Approximately.

Q. Mr. Mendelson, turning to the subject of the claimed damages by the four plaintiff centers, the hypothesis for this estimate of additional bowling revenues to a plaintiff center is that the Brunswick-operated center is out of business and that the equipment has been taken away, is it not?

A. I believe so, yes.

Q. And what happens when a center is removed from a competitive area; is the competition increased, or is it decreased?

A. Well, it not necessarily is not decreased. Decreased in the sense that there is less equipment available, perhaps, but if an area has other facilities there is still competition.

Q. My question, sir, goes to the impact, if any, in a competitive area when one center is closed.

A. Well, generally the other areas benefit by the closing of one center.

Q. Isn't competition in that market area

[1301]

increased, or decreased, therefore?

A. Well, I would on that basis say it is decreased.

Q. So in Pueblo, for example, if Belmont were closed, according to the hypothesis, the competition would be decreased?

A. The competition would be decreased by the closing of one center, yes.

Q. Now, in talking about Holiday in Poughkeepsie, Dutchess Lanes which was operated for a while by Brunswick's BCO operating division, was closed in mid-1969; isn't that correct?

A. I believe that was the date.

Q. And I believe you indicated—strike that.

Did you indicate that the revenues at Holiday Bowl-O-Mat increased after Dutchess was removed from the market?

A. I believe the figures bear that out, yes.

Q. Do you know that for a fact without the benefit of the figures?

A. Yes, I do.

Q. You are familiar with the Poughkeepsie-Wappingers Falls market area, are you not?

A. Yes.

Q. Isn't it true that very shortly after the Dutchess center was closed, Holiday raised its prices

[1302]

for bowling a game of bowling?

A. I am not familiar with the price structure or whether or not prices were raised. We at the beginning of each fiscal year always sit down and review prices for centers.

[1303]

Q. Weren't you the director of operations in 1969?

A. No, I believe I had left the company at that point. I no longer was responsible for it.

Q. And do you know, one way or the other, as to whether Holiday promptly raised its prices after Dutchess was removed?

A. No, I—

Mr. Hoffmann: Your Honor, I object to the word "promptly." It has grown from "shortly after" to "promptly."

The Court: After.

A. I can't answer that specifically.

Q. So you don't know whether the figures you looked at the other day reflect an increase in price, do you?

A. No, I couldn't state that.

Q. In fact, you don't know whether an increase in price may have been responsible for the entire increase, do you?

A. No, except the lineage figures, I believe, increased.

Q. Mr. Mendelson, do you recall that the figures showed that Holiday's bowling revenues increased from the 1968-69 season to the 1969-70 season about $24,000?

A. I remember an increase. I can't specifically say,

[1304]

without looking at the figures, as to the exact amount.

Mr. McNeill: I am handing the witness the Court's copy of Plaintiff's Exhibit 11.

Q. Directing your attention to the top line, bowling revenues, for the years 1969 and 1970. And it was in 1965 you testified that Dutchess closed.

What is the difference between the bowling revenues in '69 and '70?

A. About $24,000.

Q. With that in mind, Mr. Mendelson, what is your judgment as to the amount of additional bowling revenues per year Holiday would receive if Dutchess were closed?

A. I would estimate that we would have received perhaps 65 per cent of the bowling volume enjoyed by Dutchess Recreation.

Q. What was your experience between '69 and '70, after Dutchess closed?

A. I was not familiar with the operation at that point. I was not involved in it.

Q. Sir, what do the figures in front of you show?

A. $24,000.

Q. Is that greater or less than the estimate of $60,000 at the top of this chart, Plaintiff's Exhibit 53?

[1305]

A. Well, actually, it is very possible that its full effect doesn't take place immediately. It might take place over a season's period.

Q. Mr. Mendelson, three years ago did you have an opportunity to estimate the amount of bowling revenue that Holiday would receive if Dutchess had been closed, at a prior hearing in this matter?

A. I believe so, yes.

Q. Can you recall what your estimate was three years ago?

A. If my memory serves me correctly, I estimated about 60 to 65 per cent.

Q. Did you translate 60 to 65 per cent, if you can recall, into a dollar figure?

A. I can't remember whether I did or not; no, sir.

The Court: What page?

Mr. McNeill: I am referring to page 1032 of the transcript from April 3, 1970.

Q. Isn't it true, Mr. Mendelson, that on that day you testified that your considered opinion would be that "we"—Holiday Bowl-O-Mat—would benefit to the tune of perhaps 30 to 35 thousand dollars in the Poughkeepsie situation?

A. That's what it says in my testimony. Of course, I was being, in my opinion, conservative.

[1306]

Q. Your opinion then was conservative?

A. I believe so, yes.

Q. What about the $60,000 opinion today?

A. Well, based on what has happened, this would be more accurate than my appraisal back in 1970 of my opinion at that time.

Q. I see. Do you remember also suggesting why the $35,000 figure was accurate by stating, "We were a little out of the way from most of the business that had been in the Dutchess center. I believe our other competitors would capture the major part of that business because of the proximity for the business at Dutchess."

Can you recall testifying to that effect?

A. Well, if it is on the record, I must have testified to that, yes.

Q. And the other competitors haven't moved their centers, have they?

A. Not that I know of, no.

• • •

[1311]

Q. And did you testify that the estimated $100,000 to $120,000 was a conservative estimate of the additional bowling revenue that would come to Paradise if Star were closed?

A. I believe I said that was my estimate.

Q. Three years ago did you have an opportunity to testify as to your opinion as to the amount of dollars in bowling revenue that would come to Paradise if Star were closed?

A. I believe I did, yes.

Q. Do you recall what you testified on that occasion?

A. If my memory serves me correctly, I believe it was somewhere around 65 percent.

Q. Do you recall whether it was translated into a dollar figure?

[1312]

A. I don't recall, sir, no.

Q. If I suggested to you that you estimated $80,000 on that occasion would that serve to refresh your recollection?

A. It is very possible, yes.

Q. I refer to page 1033 of the transcript from April 3, 1970.

(Shown to the witness.)

A. Once again, I believe my testimony was on the very conservative side. And in light of what has happened, the figures appear to be as they are related now.

• • •

Q. Now, in the Paramus market area, Mr. Mendelson, have any bowling centers closed, with their equipment taken out, during the past eight years, to your knowledge?

[1313]

A. I don't believe in the immediate market area that we are involved in, in Paramus.

Q. No centers in the Paterson area?

A. Well, Paterson is not in what I consider the Paramus market area, from the standpoint of bowling.

Q. How long does it take you, when you get in your car, from the parking lot outside of Paramus Bowl-O-Mat center, to drive to downtown Paterson Highway 80?

A. Using Highway 80, it would take me perhaps—could take me 25 minutes, a half hour, depending on traffic conditions.

[1314]

Q. What about at 9:00 o'clock for the second shift of bowling leagues, 9:00 p.m., how long would it take to get from your center to Paterson?

A. 15, 20 minutes, perhaps.

• • •

Q. In your opinion, what percentage of the bowling revenue at Ten Pins on the Mall would come to Paramus Bowl-O-Mat if Ten Pins were closed?

A. Perhaps 75, 80 per cent.

Q. And what per cent of the Ten Pins business would disappear altogether; in other words, if bowlers

[1315]

quit bowling, or decide not to go to the trouble to go to another center, in your judgment?

A. I don't believe any of the business would disappear completely.

Q. Where would the other 25 per cent go?

A. In other centers that would be in our area.

Q. Esposito's center?

A. Or where they could find facilities. It could be Esposito.

Q. What if the Lodi center closed, what percentage of that business would come to Paramus Bowl-O-Mat, in your judgment?

A. Possibly 35, 40 per cent.

Q. What about Fair Lawn, what percentage of that business would go to Paramus Bowl-O-Mat?

A. Well, in the event Fair Lawn closed, I believe our percentage would be very comparable to Ten Pins on the Mall.

Q. 75 per cent?

A. Approximately, yes.

Q. And if Interstate closed, what percentage of that business?

A. Perhaps 35, 40 per cent.

Q. And if you would apply those various percentages you have just given us to the bowling income

[1316]

done at the four centers operated by BCO at the moment, you would expect to come up with the figure $120,000 or $140,000?

A. Yes, I would say so.

Q. Mr. Mendelson, in 1965, if you were in the position of having repossessed the equipment in a bowling center that hadn't been paid for, what would you have done with it.

A. Well, that's a very broad question. Without knowing other facts, I couldn't answer that.

A. Well, you do know the facts of the 1965 bowling market, don't you?

A. Yes.

Q. Was there any market for used equipment in those days, were there ready, willing and able buyers for used equipment?

A. I don't think the market was prosperous, from that standpoint.

Q. Basically, nobody was buying equipment in those days, were they?

A. Well, there were not many, let me put it that way.

[1330]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann: • • •

The Witness: I don't understand it.

Q. Well, let me try and put it this way:

What years were you in San Juan and observing Star Bowl?

A. 1967, 1968, 1969.

Q. Now, sir, did you have any knowledge that

[1331]

conditions concerning the relationship in terms of number of customers going to the two centers was any different in the years 1965, 1966, 1967 prior to your visits to San Juan than it was during the time when you made the observation about the two centers?

The Court: Do you understand that?

The Witness: Yes.

A. No.

Q. Now, Mr. Mendelson, you were asked about the Holiday additional income in the year 1969.

Do you recall when it was that Dutchess closed down?

The Court: Refresh his recollection. Do you recall 1969?

The Witness: I believe——

Q. It was during that year, wasn't it?

The Witness: During 1969.

[1332]

Q. Now, Mr. McNeill pointed out to you in Plaintiff's Exhibit 11 that the total revenue for bowling went from $141,000 in 1969 to $165,000—I'm sorry, 141 in 1969 to 165 in 1970; is that right?

A. Yes.

Q. Holiday closed down sometime during the year 1969; is that right?

A. That's right.

The Court: Not Holiday. Dutchess.

Q. I'm sorry. Dutchess closed down during that year?

A. Yes.

Q. Do you happen to know when the fiscal year for Bowl-O-Mat ends?

A. The end of August.

Q. So these 1969 figures here reflect the end of the fiscal year; isn't that right, that is, August?

A. Yes.

Q. Now, we go to 1970, that's a year ending in August, isn't it?

A. Yes.

Q. And that shows the—for what may be a little more than a year, a $24,000 difference; is that right?

A. Yes.

[1333]

Q. Would you be good enough to look at the next year, sir, now that there has been the passage of a year, what does that show?

A. $198,421.

Q. And the difference between that figure and the figure as it existed in the year before Dutchess closed down?

A. You're referring to 1968?

Q. The same figure which you used in comparing for Mr. McNeill, 141,000.

A. Difference of $57,000.

Q. That's when you got a full year in.

Now, would you look at the next year, please. Here we have experience, don't we, as to what happened?

A. Yes.

Q. What does it show for the next year?

A. $226,123.

Q. What is that difference from 141,000, what does that amount to?

A. Approximately $85,000.

Q. And, sir, can you state in light of the experience of Holiday, whether or not the estimate you gave as to additional bowling revenues which would take place if Dutchess closed down was conservative or immodest, or is it too much?

[1334]

The Court: Did you say, "immodest"?

Mr. Hoffmann: I take that one back.

The Court: Another judge might say what kind of a case is this?

Mr. Hoffmann: That's why I tried to take it back fast.

A. I would say conservative.

Q. Because if it had reflected the actual experience, it would have shown a great deal more than what was on the chart; isn't that so?

A. Correct.

Q. Now, in relation to your testimony on cross-examination about Paradise, you notice here that we only claim damages through the fiscal year ending August 31, 1970; is that right?

A. That's right.

Q. Do you know why that's so?

A. My understanding, that's when Star ceased to exist as a going business.

Q. Well, do you know when it was that Treadway acquired those lanes and pinsetting machines?

A. I can't say for certain. I believe in October, perhaps, the lanes were removed in October——

Q. You are talking now of what year?

A. 1972.

[1335]

Q. So this pertains to 1970, doesn't it?

A. I'm sorry——

The Court: You know?

The Witness: No, I don't know why the year of 1970 is used on there.

The Court: All right.

Q. You weren't present in the courtroom when Mr. Lieblich testified concerning that matter?

A. No.

The Court: I will permit you to refresh his memory with regard to any events that might have occurred.

Mr. Hoffmann: Thank you, your Honor.

Q. The testimony was—and I ask if my reciting it serves to jog your recollection—that by that time in 1970 Star had become so run down that it was no longer effective competitively, and so we no longer felt that the continued existence of Star detracted from our getting business in San Juan, Puerto Rico.

The Court: Does that refresh your recollection?

The Witness: Yes.

Q. Now, coming to Plaintiff's 22, which shows the history of Paradise Bowl-O-Mat, do you notice that starting in 1971 that figure, I take it, is the fiscal

[1336]

year ending 8/31, would it be?

A. I would assume that would be right.

Q. We have $196,000 of bowling revenue, and that compares with the previous year in what way; what happened?

A. There is an increase of approximately $26,000.

Q. Now, if you carry back to the year just before that, the general bowling revenue is about the same, is it not, as it was in 1970?

A. Within $100, yes.

Q. Now, you go up approximately $26,000, did you say?

A. Between 1970 and 1971.

Q. And you go up again in 1972; is that right?

A. 1972; 208,372.

Q. Looking at the bottom line, it includes the incidental revenue that comes along with bowling increase?

A. That's right.

Q. It also goes up, does it not?

A. Yes.

Q. From a figure in—$293,055.

That's the 1969?

A. Right.

[1337]

Q. And in 1972, $382,730.

Now, that's close to 90,000 for those items alone is it not?

A. Correct.

Q. We once more have history, don't we, in Paradise, history to go by, there is no Star any more in Paradise; isn't that correct?

A. Correct.

Q. I'm sorry, in Puerto Rico, San Juan.

Isn't that so?

So that no matter what you guessed or estimated or used your best opinion about three years ago in 1970 for those centers, we have some other guide now; isn't that correct?

However, the figures you gave and the figures Mr. McNeill read to you from your testimony in 1970 did not overestimate; isn't that also true?

A. That's right.

Q. They were, to use your words, conservative?

A. Yes.

Q. Now, Mr. Mendelson, yesterday in cross-examination, Mr. McNeill made a great deal of the phrase, "independent proprietors," and he asked you questions about different bowling centers, were they independent.

[1338]

He asked a question about Bowl-O-Mat itself, was this independent.

Mr. Mendelson, I want to ask you some questions about "independent."

Would you look up there, please?

Is that chandelier independent of the ceiling?

A. No.

Q. These glasses in the cases, are the glasses independent of the case?

A. No, sir.

The Court: I hope that chandelier isn't.

Q. I pull the glasses out. Is that independent of the case?

A. Yes, they are.

Q. Now, is it fair to say from the questions I just asked you that the meaning for the word, "independent" relates to something else, you have to be independent of something; isn't that so?

A. I would say yes.

Q. In other words, it doesn't make much sense to speak of independent standing alone all by itself.

Even when you say a man is independent, you mean he is independent of certain things, do you not?

[1339]

A. Correct.

Q. Now, it was in relationship to those things that questions were asked you yesterday, is it independent for an individual bowling proprietor to be part of a chain, that is to say, for Paramus Bowl-O-Mat to be owned by National Bowl-O-Mat, and later Treadways, is that independent, you were asked.

There was no limitation given to what was meant by "independent" isn't that so, in the questions that were put to you yesterday?

A. I believe so, yes.

[1340]

Q. Now, that use of "independent" yesterday, did that have any correlation to your knowledge with the use of "independent proprietor" as you find it in the testimony concerning the costs and expenses an independent proprietor has in running a center; what you were talking about yesterday in connection with Bowl-O-Mat and Paramus, National Bowl-O-Mat and Paramus Bowl-O-Mat or National Bowl-O-Mat and Holiday Bowl-O-Mat, that sense of "independent," is that the sense which is found when testimony relates to the question of how much it will cost for an independent proprietor to run a BCOD center, was that the relationship to the word, to the other things, that the word "independent" had in that prior testimony that you heard and the prior testimony that you yourself

gave when you were talking about the word "independent"?

A. Well, it was my feeling that the independence in some way was independent as it related to Brunswick being independent.

Q. So when a chart is built by the plaintiff here in which certain charges are reflected, interest in the hands of a proprietor who is not a BCOD proprietor, and it shows that no interest is charged for a BCOD proprietor, and you refer to the one who has interest and depreciation charges as "independent," do you mean

[1341]

independent from BCOD; isn't that what you meant?

A. Yes.

Q. And isn't that the only meaning which you gave to "independent"?

A. That's right.

Q. And to the extent that your testimony on cross-examination is anything else, do you want to change it?

This is the meaning, isn't it?

A. Correct.

Q. BCOD centers, not independent; other centers, independent; isn't that so?

A. That's right.

• • •

[1343]

Q. Mr. Mendelson, do you know how Bowl-to-Europe works, do you know how the Bowl-to-Europe program of Brunswick works?

A. I'm not completely sure, sir, but I think it was a question of putting or selecting names in some fashion, and these people were then sent to Washington, D. C. for a

final sort of tournament, and then from Washington the final winners went to Europe.

That would be the very vague description of my interpretation of it.

Q. Do you know anything about how the names were selected?

A. No, I don't.

Q. In any case, to your knowledge did Bowl-O-Mat

[1344]

ever run anything similar to this Bowl-Your-Way-to-Europe program?

A. No, sir.

• • •

Q. Can you tell us anything which BCOD does to attract competitors—to attract customers which you at Paramus Bowl-O-Mat are unable to do?

The Court: I will permit that. Bowl-to-

[1345]

Europe, you never did that, right?

The Witness: We don't have Bowl-to-Europe.

The Court: What else did Interstate or Lodi—

The Witness: Their price is lower than our price for league bowling.

Q. They have lower price for league bowling?

A. Yes.

Q. Do you know whether you have lost any customers because of that, because the price was lower for league bowling at the BCOD centers?

A. I don't know of any particular leagues that were taken away from Paramus because of that. What leagues

might have come to Paramus if our price had been the same, I don't know that either.

Q. So your answer is you can't connect the two, you don't know?

A. No.

Q. As someone long experienced in the bowling industry and as an independent operator of bowling centers at one time, as a former employee of Brunswick, as a manager of a Bowl-O-Mat center, can you give us your opinion as to whether a lower price for lineage for bowling games in a bowling center attracts business?

A. Yes, many, many bowlers and leagues who look for a lower price.

[1346]

Q. That's generally true, isn't it?

A. Yes, especially in today's market.

Q. In connection with your predictions, your testimony came out conservatively, have you ever been asked to make predictions for bowling centers other than those in the Bowl-O-Mat chain, to make appraisals of the value of business and possible future for them in the bowling business?

A. Yes.

Q. When did that happen?

A. When I returned from Europe I had contemplated —I contemplated going into the consulting business, bowling consulting business, and I discussed this with Mr. Rudo, who was then the, I believe, president of the bowling division of Brunswick, and it was his opinion at the time that the industry wasn't sophisticated enough for that kind of a—for an opportunity in that area.

However, he did recommend that I contact a bowling center in Worcester, Massachusetts called Lincoln Lanes, that this center was experiencing extremely poor business,

and that I might get in touch with the principals involved and visit with them.

And I did call, I believe, a Mr. Sol Reck—two people involved, two principals that I knew, Mr. Vaudreil

[1347]

and Mr. Reck, I believe, and they asked me to come up to Worcester and to look the situation over.

I did. I spent some three days in Worcester, and after examing their books and appraising the overall picture, their business was in such poor state, their volume was so low, that I think my word to them was if I was a genius and I was able to triple their business, that even with that kind of a volume it would still be a very highly unprofitable operation, and it was my suggestion to them that they just drop the place and allow Brunswick to take their equipment out.

They had not been—I don't believe they had been paying their notes. And as a matter of fact, we had agreed upon a fee, and I even dropped my fee for the trip.

I never got paid. And that was my one experience in the consulting field.

Q. Was that a very conservative appraisal you think you made, then?

A. I would think so, yes.

Mr. Hoffmann: No more questions.

(Short recess.)

• • •

[1349]

RE-CROSS-EXAMINATION.

By Mr. McNeill:

Q. Do you know, Mr. Mendelson, that the "Bowl-Your-Way-To-Europe" program involved competition among league bowlers, and in order to qualify for any such

[1350]

award one must compete and win; do you know that, sir?

A. I don't recall the details of the actual mechanics of the operation—of the event.

Q. Do you know how many bowlers from Ten Pins on the Mall end up qualifying to compete for this trip to Europe?

A. No, sir.

Q. You don't know that it is one man and one woman?

A. No, I wasn't familiar with that.

• • •

[1354]

RE-DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Please look at P-22. Do you have that in front of you, Plaintiff's 22?

A. No.

(P-22 exhibited on easel.)

Q. Now, Mr. McNeill, on re-cross-examination, addressed your attention to two figures that appear on the top line for bowling revenue for Paradise, is that right?

A. Correct.

Q. One of these figures was 1970—

A. That is correct.

Q. —$170,529, on the top.

A. Correct, sir.

Q. And the other figure was for 1972, $208,372,

[1355]

is that right?

A. Correct.

Q. Then he asked you to do the division—or the subtraction, rather—to see the difference. And you said the

difference is about $38,000. Am I correctly summarizing your testimony?

A. Yes, sir.

[1356]

Q. Now, Mr. McNeill didn't ask you about the bottom line, did he, the line that totals them all up? But I am going to.

In 1972, what was it?

A. $382,730.

Q. 1970?

A. $313,580.

Q. 1969?

A. $293,055.

Q. From 1969 through 1972 you have about $90,000, don't you?

A. Approximately 90,000, correct.

Q. And that includes what, besides the general bowling revenue?

A. That includes the shoe rental, snack bar, bar, pro shop, machines and miscellaneous.

Q. All these items are items which produce income normally associated with revenue, isn't that right?

A. They are, sir.

Q. Normally associated with bowling revenue.

A. Correct.

Q. Now, then, taking the figure of $90,000, this is the experience of only about a year and a half, isn't it, since Star closed down?

A. Well, perhaps less than a year.

[1357]

Q. Less than a year. So if you predicted that $100,000 to $120,000 would be additional bowling revenue, then, indeed, you would have it pretty close to the mark

with just a year's history, isn't that so; it would be about 90,000, wouldn't it?

A. Correct.

Q. And when the smoke settles, and there is a couple years' experience, what do you think of these figures—the figures on 53, for additional annual bowling revenue, a hundred to $120,000, and then a total of $124,700 to $149,640, including the net income per thousand dollars per bowling revenue, which is listed at another $1,247—Paramus, additional annual bowling revenue, 120 to 140—you already have a demonstration of about 90, do we not?

A. Referring to Paradise.

Q. I'm sorry, Paradise.

A. Correct.

Q. Then you testified before—and other witnesses, too—as to the additional revenue that comes from bowling, with increase in bowling revenue. That's here, is it not?

A. Correct.

Q. So what do you think, then, of your estimate, do you think it was conservative?

[1358]

A. I would say yes.

Q. Conservative in face of what?

A. In face of experience.

Mr. Hoffmann: The history of the center since the closedown of Star. Thank you.

The Court: Mr. McNeill.

Mr. McNeill: Your Honor, I am sorry to spend some additional time on this exhibit, but I must.

RE-CROSS-EXAMINATION.

By Mr. McNeill:

Q. Looking at Plaintiff's Exhibit 53, Mr. Mendelson, and looking at this estimate which you have testified

several times you feel is conservative, 100,000 to 120,000 dollars for Paradise, that is as to what, additional annual bowling revenues—period—is it not?

A. Correct.

Q. Not the extra net income which is supposedly derived after you have additional bowling revenue, correct; that comes later, does it not?

A. Well, that comes along with the increased bowling revenue.

Q. Correct. The first column, the 100,000 to 120,000 dollars, has to do strictly with additional

[1359]

bowling revenue?

A. That's what it says on the chart.

Q. And you testified just a moment ago, in response to Mr. Hoffmann, that you had some indication from history of some $90,000 experience in additional bowling revenues in San Juan's Paradise?

A. Composite revenues.

Q. Composite revenues. Bowling revenues plus lots of other things, isn't that correct?

A. Yes, that was the bottom line I read.

Mr. McNeill: Can we turn back to Exhibit 22, please, to clarify that?

(P-22 exhibited.)

Q. Once again focusing on the matter of strictly additional bowling revenues, this 100,000 to 120,000 dollar figure. Now, sir, to find the experience for additional bowling revenue, we look only at the top line, don't we?

A. Bowling revenue, yes.

Q. What is the difference between 1968, or take '69, or even take '70, before Star discontinued as an effective competitor, and compare it with your experience, two

full years later, you achieve $208,000. What is the difference between 208 and 170?

A. Between those two figures, $38,000.

[1360]

Q. Not $90,000?

A. Not on that basis.

Mr. McNeill: All right. Nothing further.

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. But just one moment. If you look at P-53—when you put in the extras that go along with the increase in bowling revenue, you put in an extra $247 per thousand, is that right?

A. That is correct.

Q. That's what this shows. You come to a figure here, including everything, including these so-called extras, using your word "composite," you come to a figure of $124,700 to $149,640, is that right?

A. Correct.

Q. That's the totalization.

Now,then, if you take the comparable line from P-22—which is Plaintiff's Exhibit 22—which compares the years, as I demonstrated a moment ago, as you testified a moment ago, the difference was in 1969 about $293,000; in 1972 about $382,730; or a difference of approximately $90,000.

And that was based upon a tiny experience, wasn't it, about a year?

A. Possibly less than a year.

[1361]

Q. Possibly less than a year. So my question to you was: Is $90,000 so remote from $124,000, based upon that

brief experience, as to make the estimate conservative or exaggerated?

And your answer was "conservative."

A. Right.

Q. You have already, within less than a year's experience, reflected on the chart—come within about $30,000 of the projected figures.

Is there any reason to suppose that number at Paradise—that is, the total revenue, including bowling, and the other related items, such as the shoes, the snack bar, the bar, and so on—is there any reason to suppose that that total figure will not increase this year?

A. No, I would believe it would increase.

Q. You have reason to believe that it is increasing?

A. Yes, sir.

Mr. Hoffmann: Thank you. That's all.

Mr. McNeill: Your Honor, I'm sorry, but this is so misleading that I must correct it.

RE-CROSS-EXAMINATION.

By Mr McNeill:

Q. Let's turn again to Exhibit 22—

[1362]

Mr. Hoffmann: Your Honor, is there need for all this?

The Court: I will permit him to go on. It is discretionary, I think.

By Mr. McNeill:

Q. When Mr. Hoffmann gets you to subtract $293,000 from $382,000 he is very conveniently referring to revenue items only, without taking out the cost, isn't he?

A. That's income.

Q. That's income. That says nothing about the cost, for example, of shoe rental, the cost of snack bar, the cost of bar, the cost of pro shop, or the cost of machine and miscellaneous, does it?

A. No, that's an income figure.

Q. That's an income figure.

A. Revenue.

Q. And it doesn't get distilled to take into account the cost until you get way down here and indicate at the bottom, for example, that your shoe rental is done on a 90 per cent profitable basis, but, for example, that the snack bar is only 19 per cent profitable.

So we are comparing apples with oranges, are we not, sir?

A. I was asked to project revenue figures.

[1363]

The Court: Have you finished?

Mr. McNeill: Yes, sir.

Mr. Hoffmann: I have one question, your Honor, in face of that.

The Court: I will believe it when I hear it.

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Now, this item of $1,247, the bottom line—do you see it?

A. Yes, sir.

Q. That is the item that was used in the calculation, isn't it?

A. On the other chart.

Q. On the other chart. And that shows an increase in revenue of $247 over the thousand dollars, does it not?

A. Yes, sir.

Q. That is an increase, after everything that is accounted for, has been accounted for; that's another $247 for a thousand, isn't it?

A. That's correct.

• • •

[1367]

BENJAMIN E. BENSINGER

DIRECT EXAMINATION.

Mr. Zucker: "This is the deposition of Benjamin E. Bensinger, the Chairman of the Board of Brunswick taken by plaintiffs, I believe, on April 8 or April 9, 1968. The person asking the questions is Mr. Hoffmann and the person giving the answers is, of course, Mr. Bensinger. Starting on page 3, the background information——

"Question: Would you state your name, please?

"Answer: Benjamin E. Bensinger.

"Question: And your home address?

"Answer: 1540 Lake Shore Drive, Chicago, Illinois.

"Question: And your business address?

"Answer: 69 West Washington, Brunswick Building, Brunswick Corporation.

"Question: Your age?

"Answer: 62.

"Question: What is your present occupation?

"Answer: I am Chairman of Brunswick Cor-

[1368]

poration."

Mr. Agee: "Starting again at page 27, at this point in the deposition we marked as an exhibit, which is now Plaintiffs' "——

The Court: Read it as it is and you can correct that later.

Mr. Zucker: —"which is now Plaintiff's Exhibit 361, a letter from Mr. Bensinger in his capacity as Chairman of the Board of Brunswick to Mrs. Ethel Levine dated February 11, 1965, and at this time this letter was written, Mrs. Levine was the then owner of Dutchess Lanes in the Poughkeepsie area. Mr. Bensinger's attention was called to the last paragraph of the first page of that letter which read:

" 'In spite of these difficulties, we are most anxious to work with you in finding a solution whereby you can retain the property. Our people plan to make an evaluation of the business to see if it is possible to successfully operate a bowling center there. I am certain they will be in touch with you in the very near future.'

"Question: Do you know whether the sense of that paragraph is that if your people felt it

[1369]

was possible to successfully operate a bowling center there, that you would create the opportunity for Mrs. Levine to operate it?

"Answer: I would assume so.

"Question: I address your attention now to the second paragraph of the letter.

"Answer: Correct.

"Question: In which you say, 'It is apparent that the cash flow is inadequate to service present debts.'

"Do you see that phrase?

"Answer: I do.

"Question: And then you go on:

'Although the situation should improve in June, when your second mortgage is paid, even then cash flow will be insufficient to cover the obligations of the business.'

"Did you have any formula or standard experience that could be articulated which would indicate when cash flow is inadequate to service present debts?

"Answer: Well, I don't say that we had any formula, but an analysis and the fact that our installment credit division had dozens of cases

[1370]

similar to this, they came to know pretty well, predicated on analysis of an establishment's business, whether it could succeed on the basis it was operating or whether changes had to be made in a variety of forms: curtailment perhaps of expenses, perhaps more promotion, which would cost more money.

"It required an analysis on an individualized basis; I don't think there was any pat formula conclusively proved aye or nay.

"Question: When you used the phrase, 'cash flow,' is this a specific and precise concept?

"Answer: I would think so.

"Question: Could you define it for us?

"Answer: Well, this would represent after depreciation other charges, the amount of cash availability at the end of a period of time of an operation. If there were mortgages, incumbrances and other things, this would have a great effect. If this could be eliminated, it would alter the picture.

"Question: Do you know what expenses were normally charged against cash income in order to derive a cash flow figure?

"Answer: Of that establishment, I do not.

"Question: Do you know it for Brunswick-

[1371]

operated bowling centers?

"Answer: Not in detail, no.

"Question: Do you know whether or not Brunswick-operated centers deduct from cash inflow interest on debt and depreciation of equipment in deriving a cash flow figure?

"Answer: It would certainly be involved in a statement of account to derive cash flow.

[1372]

"Question: Do you know whether that is normally done by independent operators in their financial computations?

"Answer: I do not.

"Question: I address your attention to the next paragraph which has the following in it:

'As you may know, we recently announced firm prices and firm terms for used equipment. Under this new program, all installment contracts include a finance charge rate of five percent add-on per annum.'

'Did this new program go into effect in 1965?

"Answer: I would suspect prior thereto.

"Question: The previous year, '64?

"Answer: '64, I can't answer the precise date on that.

"Question: Somewheres in that period?

"Answer: I know that Mr. Hanigan, and I was involved too, so were other officials of the company, in prolonged meetings because we had acute problems facing the company, and the decision was made to maintain prices, to adjust finance charges and to treat all customers identically and equitably.

[1373]

"Question: Does it follow from what you have just said that after the five percent add-on was made a part of the new program, that it was applied to similar situations for all purchasers?

"Answer: I would say all purchasers from the date of inauguration of this policy had to conform to the then terms, irrespective of whether it involved down payment, perhaps trade-in of equipment and/or finance charges, yes.

"And that was our policy and still is."

Mr. Zucker: At this point we had marked for identification Brunswick's Evaluation Report No. 76, which is now marked as Plaintiff's 344, which was an analysis of the Dutchess Lanes Center under the date of March 29, 1965. Mr. Bensinger examined portions of the report.

Beginning at page 33 of the transcript:

"Question: Mr. Bensinger, I address your attention to page eight of Plaintiff's 3 for identification and ask you if you will notice the first line under the heading, 'Profit and Loss Cash Flow, BCO Forecast.'

"What does that mean, sir? What do the initials 'BCO' stand for?

[1374]

"Answer: I don't see where you see 'BCO' forecast.

"Question: On page eight you will notice there are three lines centered, 'Lemar, Inc., Poughkeepsie, Profit and Loss Cash Flow,' at the top of the page.

"Answer: Yes, I see that.

"Question: Just below that, slightly to your right, 'BCO' Forecast.

"Answer: 'BCO' refers to Brunswick's Center Operations.

"Question: What does the phrase mean, 'Found in an evaluation report?'

"Answer: There are others infinitely more qualified than I to explain the multitudinous details with

respect to the BCO operation. But I can tell you what it is, if that is what you are asking.

"I don't understand what you are asking.

"Question: Mr. Bensinger, I thought my question was quite plain and I have not gone into any of the multitudinous details yet, perhaps I will later on.

"I just asked you what the phrase 'BCO' forecast meant.

[1375]

"Answer: It is a forecast made by our department, Brunswick Center Operations.

"Question: And by forecast?

"Answer: Projection.

"Question: Projection of possible future earnings, is that a fair statement?

"Answer: Either earnings or losses or the results of their operations.

"Question: I show you the line 'Net Cash Flow' with 'Deficit' in paren, and ask you to observe, if you will, the column under 1965 which under net cash flow shows $28,389.

"Is my reading correct?

"Answer: Pardon?

"Question: Did I read that correctly?

"Answer: You did.

"Question: Now, under 'Expenses' do you see any figure on this projection for interest?

"Answer: Not on that page, no.

"Question: Would interest normally be found in such a projection?

"Answer: Would interest be normally found in such a projection?

"Well, interest certainly is an item of cost. If there was an interest obligation,

[1376]

where it would be found I don't know. It certainly does not appear to be on this sheet. It might be on other sheets.

"Question: You don't know whether it would be found, say, under non-cash items, which is another heading on this page?

"Answer: It doesn't appear to be, because that refers solely to total depreciation.

"Question: Indeed, there is no reference on the page which points to interest, is there?

"Answer: No, there doesn't seem to be.

"Could be. Again this would have to be analyzed by those who have the requisite expertise in this area. It might be under certain of the expenses.

"Question: Have you had occasion over the years to analyze evaluation reports for the Brunswick operating division?

"This is not the first one you have seen, is it, sir?

"Answer: No. But I do not generally review matters such as this. This is not within my province in the operation. I was in charge of the company's business. There were others that I delegated that responsibility to.

[1377]

"Question: Did you ever at any time make decisions as to whether or not Brunswick should acquire an operating center, bowling operating center?

"Answer: I don't believe so.

"Question: Did you ever participate in the making of such decision?

"Answer: Yes.

"Question: In participating in the making of such decision, did you have occasion to consider evaluation reports prepared by Brunswick people as to the possible future earnings or loss of the acquired bowling center?

"Answer: I am sure that those that would have made the presentation to management would have carefully analyzed and made recommendations that might have referred to certain statistics or figures to us in order to arrive at a decision.

"Question: Without going into multitudinous details, I address your attention to the total depreciation line under 1965 again, which you will observe has a figure of $27,300, and that also appears, does it not, under expenses as Brunswick's depreciation, $27,300?

"Answer: $27,300, correct.

[1378]

"Question: Have you any way of telling from looking at this page to what this reference of Brunswick depreciation refers?

"Answer: No, I do not.

"I can only assume it is a normal depreciation charge requisite to the establishment."

Mr. Zucker: Turning to page 38 of the transcript, Mr. Hoffmann had marked for identification a profit and loss statement of Dutchess Lanes in the Poughkeepsie area, again for the year ending December 31, 1966. This profit and loss statement has been marked in this action as Plaintiff's Exhibit No. 24 for identification, and at transcript page 38 Mr. Hoffmann had a question:

"Question: If I were to suggest that it is the profit and loss statement put out by the Bowling Center Operations Division submitted to us in answer to our demand for documents, are you willing to affirm that?

"Answer: Would I what, sir?

"Question: Will you affirm that statement?

"Answer: Well, it is a complete detailed report on Dutchess Lanes on Poughkeepsie, N. Y.

"Question: Very good.

[1379]

"Answer: Put out by the Bowling Center Operations Division.

"Question: This reflects actual operation, does it not, sir, for the year 1966?

"Answer: I can only assume that that is what it does, sir.

"Question: But if it is what it purports to be, that is what it does, is that correct?

"Answer: Well, it is dated December 1st, 1966, and I don't know if this is the fiscal year or calendar year; but, it certainly appears to be a detailed report.

"Question: I address your attention to the last page. Would you notice under the first column which is entitled 'Account Description,' an entry which says Profit or Loss, and then a minus sign after the 'Loss'. Am I fairly reading it?

"Under the first column it says 'Account Description.'

"Answer: Yes, I see.

"Question: Then after the word 'Loss' there is a minus sign, is that right, or a little dash?

"Answer: Yes.

[1380]

"Question: Now, if your eye will go across the page under, 'Current Actual,' do you see the entry $30,755 with the same little minus sign or dash?

"Answer: I do.

"Question: Can you tell us what that means?

"Answer: I cannot.

"Question: Well, if I suggest to you that following the description given under 'Account Description,' which says 'Loss' with a little dash, that means that during '66 operations insofar as reported here, Dutchess lost $30,755. Would you say my description is inaccurate in any way?

"Answer: If that dash—and, I guess it can be assumed that the dash refers to a loss, yes.

"Question: You would see no other reason for putting the dash after the word 'Loss' under 'account

description,' would you, sir, except to designate what is a loss?

"Answer: No.

"Generally, in many other statements, and I am not familiar with these statements, if

[1381]

it were a loss, it could be a bracket.

"Question: Or sometimes perhaps in parentheses?

"Answer: Some marking in parentheses.

"Question: But that would be indicated on the document?

"Answer: Normally, yes.

"Question: And here the indication for a loss is the dash, is it not?

"Answer: It would appear to be, yes."

Mr. Zucker: At this point in the transcript Mr. Hoffmann on behalf of the plaintiffs marked a document which is now Plaintiffs' Exhibit 25 for identification, a similar profit and loss statement for Dutchess Lanes in Poughkeepsie, this time for the fiscal year ending December 31, 1967, and Mr. Hoffmann refers Mr. Bensinger to the last page of the document and asks the following questions:

"Question: Do you notice on the first line of figures, again under, 'Account Description,' a line that says 'Profit or Loss' with a little dash after in the first column?

"Answer: Right.

"Question: Do you see 'Profit or Loss' with

[1382]

a little dash? Your answer is right? I am sorry, I didn't hear you.

"Did you say right to that?

"Answer: I did.

"Question: Yes.

"Then under, 'Current Actual,' do you notice the figures $28,776 with a dash?

"Answer: I do.

"Question: Would your testimony as to this be the same as to Plaintiff's 4 for identification, that is, that it appears to indicate an actual loss for the period of time described up until the date?

"Answer: That is correct."

Mr. Zucker: Omitting some colloquy, I am now at page 43, where Mr. Hoffmann asked:

"Question: Is it to your knowledge, Mr. Bensinger, the policy of the Bowling Center Operations Division to run bowling centers for any standard period of time at an actual cash flow loss?

"Answer: I think I understand your question, sir.

"Question: Well, if it needs any clarification, I will be glad to give it, sir.

[1383]

"Answer: No.

"But I think it needs an answer that perhaps goes beyond.

"It certainly would not be the policy of any corporate operation to conduct its business ad infinitum at a loss, but the BCO operation does entail some establishments that are profitable, some that are losing moderately.

"So, I think to answer the question, if it is our policy to operate the centers solely for the purpose of generating losses, the answer would be no.

"The objective is to convert them to at least profitable operations, perhaps then dispose of them.

"The whole BCO operation itself came about, as I am sure you are well aware, certainly Mr. Lieblich is, as a result of our inability to collect our note accounts receivable.

"And I don't know whether you care for me to amplify this at this point in time?

"Question: I would be delighted if you would, sir.

"Answer: But, obviously, we had to have some procedure and policy whereunder and whereby

[1384]

we would salvage as much as possible out of a very unhealthy number of note accounts receivable from customers. So this salvage operation was instituted.

"Question: Are you talking now of the beginning of a program to acquire bowling centers? That is to say, your statement as to the operation being a salvage operation; does that relate to the point in time when Brunswick decided to operate bowling centers in recent years?

"Answer: Well, I didn't know that we ever decided to operate bowling centers in the sense that we would go out, pell mell, and install or in any fashion install a new installation.

"Our interests, as I think any other company's interest is and has to be, is to work with their customers.

"Question: Is it your testimony that the sole motivation for Brunswick's operating a bowling center is a salvage operation in the situations where the bowling center proprietors are in default on debts to Brunswick?

"Answer: Would you read that back, please?

("The question was read.)

[1385]

"In answer to that, I would say that is the primary reason for the operation. And I am talking reasonably currently. I don't know what specific point in time you had in mind, sir.

"Question: Presently.

"Answer: Presently?

"I believe it is still a salvage operation. I think that some that have been improved, we have disposed of. That does not mean that if there were a location that our BCO people felt required another installation, we have quite a few warehouses full of equipment, and I think it is our business to protect the shareholder, and we would like to move that inventory if we could so do without in any sense being harmful."

The Court: Let's stop there, page 669. Luncheon recess, members of the jury. Thank you for your patience and attention.

(Luncheon recess.)

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[1386]

The Court: Now, when you continue reading the depositions, are you in a position to state the exhibit number as far as this proceeding is concerned?

Mr. Zucker: We can give it a new number for identification purposes and just refer to it that way.

The Court: Whichever way.

(The jury entered the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

The Court: Page 669, right, tenth or eleventh line down, roughly.

(The reading of the testimony was resumed by Mr. Zucker and Mr. Agee:)

[1387]

"Question: Do you have any knowledge of how many Brunswick-owned or operated centers are in operation?

"Answer: Within broad limits, yes.

"Question: Could you give us the figure within broad limits?

"Answer: It would hazard a judgment that we perhaps have 14, 15 thousand lanes.

"Question: Can you convert the lanes into centers?

"Answer: I would prefer to check my figures on this. It must be in the area of——

"I would rather not hazard a guess.

"Question: If I suggest the following numbers to you, can you tell us whether this accords in a general way with your knowledge: That in 1965 there were 136; in '66, 194; and in 1967, 198?

"Answer: Sounds very reasonable.

"Question: Addressing yourself to centers with a cash loss, do you have any knowledge about how many centers there are that produce an annual cash loss of the 198 that existed in 1967?

"Answer: I do not.

[1388]

"Question: If I suggested the number 86, would that mean anything to you?

"Answer: It would not."

Mr. Zucker: At transcript page 47 we marked as an exhibit for identification a document which was essentially the same as a document marked in this action as Plaintiff's Exhibit 15, the first page of which has been blown up as a chart and represented Mr. Lieblich's analysis of centers which made a profit, which incurred a cash loss and which incurred a net loss in the accounting sense, and Mr. Hoffmann asked the following question, at page 48 of the transcript, with respect to the analysis of these figures:

"Question: You note that the second line indicates centers with a cash loss and shows 42 for 1965, 97 for '66 and 86 for '67.

"Does that accord with any knowledge you might have as to the approximate number of centers yielding a cash loss?

"Answer: Well, as I have indicated, I am not familiar with the details of this whatsoever.

"If these figures came from Brunswick, I can only assume they are accurate.

"Question: When you see the figures for

[1389]

centers with a net loss, that is to say 108 for 1965, 131 for '66 and 121 for '67, does that come as any kind of a surprise to you?

"Answer: None.

"Question: Are you operating all these centers, Mr. Bensinger, as a salvage operation?

"Answer: To the best of my knowledge, yes."

Mr. Zucker: Then at this point Mr. Hoffmann asked the following questions:

"Question: Do you have any idea what the total losses involved are for running the salvage operation each year?

"Answer: Not in dollars and cents.

"I have been informed that we have been infinitely better off by this policy of operating.

"Question: As against what alternative, closing down the centers?

"Answer: Closing the centers and putting additional equipment in warehouses. We are getting our debts reduced, and our collections are coming in.

"Question: If you were to close down all the centers instead of incurring these annual losses, would you then have a sizeable capital loss?

[1390]

"Answer: If we closed them down?

"Question: Yes.

"Answer: Why should we?

"Question: Suppose all the ones that were losing money, suppose you closed them down at once; would that result in a large capital loss?

"Answer: I would assume it would. I would have to analyze the figures.

"Question: Brunswick has had the experience of having in one year a very large capital loss in recent past, isn't that so?

"Answer: If you mean our write-off, that is the understatement of all time. Yes.

"Question: Is it fair to state to your knowledge, as seems to be reported in financial circles, that this was the second largest writeoff in recent years, exceeded only by General Dynamics?

"Answer: The one in 1965 you are referring to?

"Question: Yes.

"Answer: I believe that is correct. I don't know if it is the second or third, but it was mammoth, not very pleasant.

"Question: Is my memory at all accurate

[1391]

when it suggests to me 76 million dollars or approximately that amount?

"Answer: That is it.

"Question: Was it necessary to explain that 76 million dollars to the stockholders via annual reports or otherwise?

"Answer: It was.

"Question: If you had a large capital loss at this time, would it be necessary to explain it to the stockholders of Brunswick?

"Answer: I am sure it would.

"Question: What is your informed opinion as to the effect of that on the stock quoted on the stock market today, were you to sell all these centers at once?

"Answer: I don't think from my knowledge of the business we have that problem facing us.

"Question: Tell me, Mr. Bensinger, is it a company policy to gradually dispose of the losing bowling centers, that is to say over a period of years?

"Answer: I can't answer that either.

"I would suspect our energies would be devoted to converting the losers to winners, if that is possible.

[1392]

"If you are saying that after every effort has been exhausted to do that, the wisdom of carrying on ad infinitum, that is quite another question.

"I would have to have that, I would think referred to those in charge of that division and those more familiar with the details than am I.

"Question: Has there been any policy formulation as to how long Brunswick is prepared to operate a losing bowling center; that is to say, when a center loses money?

"Answer: Not to my knowledge have we put any span of years on a policy of that nature.

"It is possible there could be such a policy; I am not aware of it.

"Question: Is it the Brunswick policy to sell off, if buyers can be found, its losing bowling centers?

"Answer: I can only assume yes.

"Question: Do you know one way or the other?

"Answer: I do not.

"Question: Who in the company would best know the answer to that question?

"Answer: I would think Mr. Rudo,

[1393]

the man in charge."

(Discussion off the record.)

Mr. Zucker: We'd like to substitute additional pages from the deposition at this point.

(Discussion off the record.)

Mr. Zucker: I will have to read both the questions and the answers.

The Court: Where are you reading from now, what page?

Mr. Zucker: I'm reading from the top of page 56 of the deposition of Benjamin Bensinger.

The Court: Do we have it?

The Clerk: No.

Mr. Zucker: "Question: Is there, to your knowledge, one price charged for automatic pinsetting machines?

"Answer: Yes, there is one price.

"Question: What is that price, do you know?

"Answer: I think the package price, there are those here who are familiar with this, for used equipment is 85 or $8600 for a lane and pinsetter used.

"Question: You said for a——

[1394]

"Answer: For a lane and pinsetter, used. Used equipment.

"Question: Let's address ourselves to new equipment, if you will, and separate in your mind a lane from a pinsetter.

"Is there a standard price for new——

"Answer: There is a standard price. I couldn't quote it because I don't know if it——

"Question: If I suggest the amount of $8100, would that jog your recollection?

"Answer: Well, I recall an $8100 price. Whether that is the current price, I don't know.

"Question: Whatever the current price is, is it the standard price, is that right?

"Answer: That's right.

"Question: That is to say, for all purchasers; is that right?

"Answer: Well, all purchasers, I'm not sure there is not an adjustment made for the Government or its agencies.

"Question: Now, as to the price of $8100 we were speaking, were we not——

"Answer: That is a new pinsetter.

"Question: New pinsetter. Is that the A-1 or the A-2, or is there any difference in

[1395]

price between them?

"Answer: I don't believe there is any difference and I would assume it is an A-2.

"Question: Do you know the price for a lane as such as distinguished from a pinsetter?

"Answer: I do not.

"Question: Do you know whether there is a standard price for a lane?

"Answer: Yes, it is a standard price.

"Question: If I suggested the amount of $4500, would that jog your recollection in any way?

"Answer: I believe that there was a price of the new lane with the requisite equipment, and what it is today, I do not know.

"Question: Are these prices made standard because of the requirements of C. I. T.?

"Answer: In no fashion, sir.

"Question: Well, does C. I. T. require a standard price or that the same price be charged a different customer?

"Answer: I don't believe so.

"Question: Do you know one way or the other about that?

"Answer: I once looked at—I was involved

[1396]

in negotiating with the C. I. T. agreement, but I can't recollect, but I would doubt very much. They were concerned in getting their money.

"Question: Are you telling me now as to the period about 1960 or 1961——

"Answer: I am.

"Question: At the time did the prices I suggested in my questions hold, that is to say, the price of $8100 for pinsetting equipment and $4500 for a lane?

"Answer: I think there were variables during those years.

"Question: Did those variables exist after agreement, if any, reached with C. I. T. operate again?

"Answer: If there were such, I am sure they did.

"Question: Was there an agreement reached with C. I. T. as to financing in 1960-'61?

"Answer: Prices?

"Question: As to financing.

"Answer: Yes, there were specific agreements with C. I. T. as to their interest charges, what they expected to get.

"Question: Were there any agreements reached

[1397]

with C. I. T. which required that the price for the pinsetter be uniformly $8100?

"Answer: Well, I think the price of the pinsetter was never altered from $8100. This is a matter of my recollection at this point in time. If there were variables, it would have been on a lane, a combination, or something else. This is the best of my recollection.

"Question: I see. Do you remember it ever having been sold at a lower price——"

Mr. Dwyer: Did you leave out the word, "not"? "You do not remember?"

Mr. Hoffmann: Read the question over.

Mr. Zucker: Yes, I see.

"Question: You do not remember it ever having been sold at a lower price than $8100 during the period 1960 to 1961?

"Answer: I do not."

The Court: That was the deposition of Mr. Bensinger?

Mr. Zucker: Yes.

Then starting again at page 70——

Mr. Dwyer: Of the same deposition?

Mr. Zucker: No, of the transcript.

Mr. Dwyer: Page 675?

[1398]

Mr. Zucker: Yes, same deposition, Mr. Bensinger:

"Question: You are aware, are you not, of sizeable losses incurred generally by Brunswick each year, are you not made aware of that?

"Answer: I certainly am.

"Question: Do you have any idea of what the gross income of Brunswick is or was for 1967?"

The Court: You have lost me. What page are you on?

Mr. Agee: Page 675, your Honor.

The Court: All right, I have found it.

Mr. Zucker: "Question: You are aware, are you not, of sizeable losses incurred generally by Brunswick each year, are you not made aware of that?

"Answer: I certainly am.

"Question: Do you have any idea of what the gross income of Brunswick is or was for 1967?"

The Court: You lost me. What page are you on?

Mr. Agee: Page 675, your Honor.

The Court: All right, I have found it.

[1399]

"Answer: The gross income of Brunswick Corporation?

"Question: Yes, is it Brunswick Corporation?

"Answer: In excess of 300 million dollars.

"Question: Is that the consolidated Brunswick companies?

"Answer: That is.

"Question: Did that figure—300 million dollars?

"Answer: Plus."

[1400]

"Question: Plus

"(Continuing.)—300 million dollars plus represent any consolidated profit for the company?

"Answer: Well, you are asking a question that one has to do with volume and the other has to do with net profit. I wish you would perhaps rephrase that for me.

"Question: Was there a net profit made by the consolidated Brunswick Company during the fiscal year 1967, if that was the fiscal year or the calendar year, whichever way the reporting was done on it?

"Answer: Yes, there was.

"Question: Very well.

"Was there a loss incurred by any of the Brunswick divisions or operations so far as you know during that same period of time?

"Answer: There was.

"Question: Was there a loss incurred by the Brunswick operated bowling division during that period of time?

"Answer: I believe there was.

"Question: Were you made aware of the extent of the loss?

"Answer: I am sure I was exposed to it, yes.

[1401]

"Question: Is there some particular reason why that did not register with you, Mr. Bensinger, is that what you are telling me?

"Answer: No. But I know we lost in another division, but I couldn't tell you today what the amount was, sir.

"Question: Would a loss of more than a million dollars be regarded by you as a sizeable loss for a particular operation of Brunswick?

"Answer: Yes, it would.

"Question: What was the net profit figure in 1967 to which you referred a minute ago in your testimony?

"Answer: I prefer to look at a recently issued annual statement that we have on that.

"Question: Can you give us an approximation within a tolerance of ten, fifteen percent?

"Answer: I can tell you it was 33 cents per share, and you can multiply that by 18 million, 400 and some odd thousand shares and get the exact amount in dollars.

"Question: Do you know whether there exists any policy at all concerning the extent to which an individual bowling center owned or operated by

[1402]

Brunswick can incur a loss for a single year and still be maintained by Brunswick?

"Answer: No, I do not.

"Question: In terms of your own knowledge and judgment about Brunswick's conduct of its affairs, would you maintain a bowling center that lost 5 million dollars a year?

"Answer: Well, yes, conceivably.

"I will have to qualify that answer: Maybe we own the land and the building, and there might be mineral rights, maybe there are some discoveries of oil, some exotic minerals beneath it.

"I think we would look askance. I doubt very much whether we——

"Question: Has there been a situation up to now, Mr. Bensinger, in which Brunswick has been fortunate enough to find exotic minerals, oil, gold or things of that general kind, underneath its land?

"Answer: In one instance, yes.

"Question: Was that land pre-empted by a bowling center?

"Answer: No.

"Question: Did that great find come in some

[1403]

other branch——

"Answer: I didn't say it was a great find.

"Question: Pardon?

"Answer: I didn't say it was a great find.

"Question: You are quite right.

"I should not have used that phrase. It did not swell the earnings of the bowling division, did it, Mr. Bensinger?"

Mr. Zucker: Turning to page 122 of the Bensinger transcript, Mr. Bensinger referred to what Brunswick called a five year plan which was prepared in the middle of 1965 concerning Brunswick's objectives for the Bowling Centers Operating Division, I believe, for the year period 1966 through 1970.

Mr. Hoffmann asked Mr. Bensinger the following question, the first question on page 122.

"Question: Now, Mr. Bensinger, I would like you to address your attention to Plaintiff Bensinger's 60 for identification. I ask you to read, if you will, under B entitled, 'Plans for meeting objectives, objective number one,' and then there is a matter under there which is introduced by a little 'a'.

[1404]

"Answer: Yes, sir.

"Question: Are you familiar with the circumstance that in 1965 there was substantial addition to the personnel staff of the Bowling Division, Bowling Operating Division?

"Answer: I am.

"Question: When the statement is made in objective number one, little 'a': 'The basic organization chart should be able to handle two or three times the number of establishments we will have at the end of this year,' do you know whether that basic organization chart was designed to accommodate merely salvage operations?

"Answer: I would assume that was the intent. At that point in time we were taking back, unfortunately, an inordinate number of establishments, and the exact and precise number of those that we might have to take back in the future could have been greater.

"Fortunately, conditions changed a bit, so that we did not have to take two or three times as many back.

"Question: I address your attention to little 'b'.

[1405]

"Answer: Yes, sir.

"Question: The first sentence of which is: 'By the end of 1966, we should be prepared to move worldwide in operating bowling establishments if there is a corporate need.'

"Can you tell me what that sentence means?

"Answer: I think I know the intent of the sentence. It should mean that—or, does mean, that by the end of 1966 with more experience, a little more in the way of trained managerial talent, a little more knowledge of the details of operating a very, very large chain, that if it were deemed wise by the corporation to improve its profits, they would be in a position to expand their operations.

"Question: And that would be done, is it the intent of this sentence, through the table of organization of the Bowling Operating Division?

"Answer: It implies that it would have been done, had it been done through that particular organization.

"Question: I address your attention to the next sentence: 'The personnel should become experts in their field, particularly the staff

[1406]

members, and with this additional year of experience we should be able to take on additional assignments throughout the world, if necessary.'

"Is that in contemplation limited to salvage operations?

"Answer: Yes and no, sir.

"Question: What is the no, sir?

"Answer: The no, sir, is I was intimately involved in the establishment of a counterpart of BCO in Europe, the purpose of which was to in various countries arrange to have bowling establishments built, created, with Brunswick equipment and to popularize the game, if possible, in England and France and Germany and many other—Italy—countries.

"Question: I address your attention, Mr. Bensinger, in the same document to a later page bearing on top, 'B, Plans for meeting objectives,' then, 'Objective number two.'

"Answer: Yes, sir.

"Question: Do you notice the listing of establishments for 1965 through 1970?

"Answer: I do.

"Question: Was it known to your knowledge in 1965 that there were all these different establish-

[1407]

ments in distress?

"Answer: This isn't many establishments, sir, compared to the number that were in distress.

"Yes, we knew in 1965. Again, I don't know the date at which this was written. But we knew that the Credit Department made an analysis of the establishments that were delinquent, those that looked as though they might work it out, those that would have extreme difficulties. And I am assuming that this is a list of the extreme difficulties which we would probably have to replevin or take over and operate and try and salvage.

"Question: Isn't it the meaning of this item that you were projecting five years in advance to the acquisition of 25 establishments in distress in 1970?

"Answer: Well, it would appear that 1965, '66 and '67 figures were infinitely higher than they were in '68. So the only deduction I can make from this is that there wouldn't be so many in distress at this point in times and that we could effectively take them over if we had to, salvage them, get a cash flow, hope they would be profitable.

"Question: Was it contemplated that when the

[1408]

bowling establishments became profitable, sir, that they would be sold off?

"Answer: Yes. I think we had made establishments available for sale. I think we sold some of them.

"Question: Was it contemplated to sell all the bowling establishments which became profitable?

"Answer: I think if we had an offer for all of the establishments on the basis of a sales price that was a going business operation, we might very well be disposed to get rid of them. I don't know.

"Question: Well, do you know whether it was contemplated to sell them off individually as they become profitable?

"Answer: I don't know that there was any written policy to this effect, but I know that there were many discussions, and I believe that we would have disposed and would still, if a customer was worthy of the credit, would pay the price that we would have set on the establishment, I think we would make it available for him.

"Question: Mr. Bensinger, I address your attention to the same document, under 'B. Plans

[1409]

for meeting objectives,' little 'b', little roman numeral 'iv'.

"Answer: The A-2 conversion business?

"Question: Yes.

"The statement is made: 'The A-2 conversions in the better houses and certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the bowling division sales.'

"Can you tell me whether conversions, A-2 conversions in the better houses have taken place?

"Answer: I cannot answer whether they have. I can only assume that they have.

"Question: Do you understand the sense of this?

"Answer: I think I do, yes.

"Question: Will you be good enough to explain it to me?

"Answer: I think the intent here is clearly stated. In the good houses in certain locations, with A-2 conversions it would stimulate business and, as a consequence, when business gets stimulated in house A, house B, a coup[illegible]of miles away, or wherever it might be, and C and D w[illegible]uld have some

[1410]

call for comparable equipment by their customers and, in turn, they would perhaps be amenable to having a Brunswick salesman sell them some A-2 conversions.

"Question: Perhaps the obscurity I see in your answer is my own difficulty and not what you said. But when the reference is made to the A-2 conversions in the better houses, is that reference to the better houses owned or operated by Brunswick?

"Answer: I would think this reference——

"Question: This reference?

"Answer: Yes, this reference is made to the better houses that Brunswick is operating.

"Question: Then when it refers to increasing aid and increasing revenues, it is meant in increasing revenues for those houses, isn't that so?

"Answer: Yes, for those that had the A-2 conversions, because it is faster and more popular with the bowler.

"Question: Then the next phrase with reference to enticing competition to try to convert also. By competition, is that meant to represent the independent bowling establishment?

"Answer: I would assume it would.

"Question: Or other chain of bowling centers?

[1411]

"Answer: I would assume so.

"Question: And thus assist the bowling division sales. Does that mean the bowling division which makes the A-2?

"Answer: Which sells the A-2.

"Question: Sells the A-2 conversions, would have more sales if the competition converted, is that right?

"Answer: Yes. If this helped one proprietor's business, it is reasonable to assume it would help others and, therefore, the others would be interested and, therefore, perhaps buy.

"Question: At the same time, then, stimulate the sales of Brunswick bowling equipment?

"Answer: Stimulate the business for the proprietor and stimulate sales for Brunswick, yes.

"Question: Now, referring to the same entry again, this A-2 conversions in the better houses, do you know whether it was contemplated that A-2 conversions would be made as a mere salvage operation in the better houses?

"Answer: I don't recollect precisely, but I know that in some instances it was felt unwise to expend the monies at a certain point in time

[1412]

and make these conversions until certain renovative steps had been taken, perhaps clean up the establishment, change its management, because the conversion does cost money to Brunswick and/or to a customer.

"So, some of them, I imagine, remaining with the A-1's, as they became better managed and better organized, it would appear that some of them were converted to A-2's.

"Question: Do you know whether upon their being converted to A-2's it was contemplated by Brunswick that the bowling center would be continued in operation, in order to win profits for the company or serve the other advantage indicated in that paragraph?

"Answer: I would think it would have been done to improve the revenues of Brunswick and to make a property more saleable in the event of disposition later on.

"It would have a better track record.

"Question: Do you know about how much it costs to convert an A-1 to an A-2 for a lane?

"Answer: I would like to ask counsel, is this a proper question for me to answer in the

[1413]

sense that if you mean costs, do you mean factory cost, total cost or what kind of cost? What we would sell them for?

"Question: Brunswick's cost. I will ask what you sell it for next.

"Answer: I can't give you a specific item. I would estimate, but others know this precisely, several hundred dollars per unit.

"Question: Yes.

"Who in the company would know this precise amount?

"Answer: Mr. Milton Rudo would know or could find out.

"Question: Do you know what the manufacturing cost for an original A-1 pinsetting machine is, not a conversion kit but the machine?

"Answer: As a matter of fact, when our A-2 development occurred, it was after our high period of production. I know what our costs were when we were making A-1's in large quantities.

"Question: Could you tell us what that figure was for an A-1?

"Answer: In the area of two thousand plus. That is just factory cost.

[1414]

"Question: Yes.

"Do you know what the sales price for an A-2 conversion kit is, or roughly?

"Answer: No, I really don't.

"Question: If I supplied the figure $2,000 would that appear right to you?

"Answer: I wouldn't care to answer that, sir, because I really don't know for sure.

"I could have this figure checked very readily for you.

"Question: Do you regard the A-2 as a substantial development or improvement in the art of pinsetting?

"Answer: I don't know whether, sir, I am qualified to answer this.

"But it was certainly from every point of view, namely, the proprietor and the customer, a more desirable machine to bowl against.

"Question: Do you know anybody in the world that is more qualified to answer that question than you are, sir?

"Answer: I don't know that anybody in the world can give you a precise answer.

"It certainly speeded up the game of bowling.

[1415]

"The reason I say that, sir, is at one point in time, as Mr. Lieblich only knows too well, there was a great demand by bowlers to get on bowling lanes. When that dropped off, the mere fact the machine was there, available to do the quicker job didn't, of necessity, mean more income to the proprietor, because there weren't enough customers, perhaps, to utilize that improved product."

Mr. Zucker: Moving to page 135, the center of the page, Mr. Hoffmann asked:

"Question: Was there, Mr. Bensinger, a time when the operation of bowling centers was a very prosperous and thriving—

"Answer: By Brunswick and its centers?

"Question: (Continuing.)—activity for bowling center proprietors?

"In other words, was there a time when operating bowling centers produced a large profit yearly for the operator?

"Answer: You are referring to proprietors, not Brunswick?

"Question: Proprietors, independent proprietors.

"Answer: Yes, I think at the outset they

[1416]

did very well.

"Question: By the outset, in years what period are you referring to?

"Answer: 1958, '59, '60, some in '61, some in '62.

"Question: Then did there come a drop-off in bowling?

"Answer: Yes, there came a drop-off. A drop-off developed in bowling.

"Question: When was that, '62 or '63?

"Answer: There were evidences of a decline in the latter part of '62, and it was accelerated in '63, further accelerated in '64.

"Question: From your knowledge of this industry, can you tell us what caused that drop-off?

"Answer: I think a variety of factors, sir.

"Question: Would you give us the principal ones?

"Answer: Inadequate capitalization of the proprietor, inadequate management of a trained and skilled nature. I think there was congestion in certain areas of establishments, a lack of coordination and cooperation as to requisite promotion and publicity.

[1417]

"There are a great many factors that entered into this.

"Question: Was over-building one of the factors?

"Answer: I indicated congestion.

"Question: I didn't hear you.

"Answer: I indicated congestion was one of the factors.

"Question: By congestion, you mean too many centers in particular bowling areas?

"Answer: Yes."

Mr. Zucker: That concludes the portions of the Bensinger deposition.

The Court: What's next?

Mr. Hoffmann: The next witness, Mr. Golobic.

REX MARTIN GOLOBIC, called as a witness on behalf of the Plaintiffs, being duly sworn, testified as follows:

[1418]

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Golobic, where do you live?

A. San Francisco.

Q. Do you have a place of business?

A. Yes, I do.

Q. Where is that?

A. I have an establishment—a bowling establishment in San Francisco, one in Colma, California, and one in Mountainview.

Q. And what is your relationship to those establishments you just mentioned?

A. I am the proprietor.

Q. Mr. Golobic, are you here testifying under subpoena?

A. Yes, I am.

Q. Do you have the subpoena with you?

A. I have it in my briefcase.

(Document given to counsel.)

Mr. Hoffmann: May I have the subpoena sent to Mr. Golobic marked as an exhibit.

(Exhibit P-56 marked for identification.)

Q. Mr. Golobic, I show you Plaintiff's Exhibit 56 for identification and ask if that is the subpoena you just referred to in your testimony?

A. Yes, it is.

[1419]

Mr. Hoffmann: I offer it in evidence.

Mr. McNeill: No objection.

The Court: P-56.

(Exhibit P-56 received in evidence.)

Mr. McNeill: Do you have an extra copy that I can have?

(Document given to counsel.)

By Mr. Hoffmann:

Q. Mr. Golobic, are you testifying here in your capacity as a proprietor, an individual proprietor?

A. Yes, I do.

Q. Are you testifying in any other capacity?

A. Yes, as president of the Bowling Proprietors Association of America.

Q. What is the Bowling Proprietors Association of America?

A. It is a trade association of proprietors in the whole United States.

Q. With membership throughout the United States?

A. Yes.

Q. And about how many of the proprietors are represented in the Association?

A. About 50 percent.

Q. Can you tell us, in terms of number of lanes,

[1420]

or number of proprietors, what the total number in the United States is?

A. The total number in the United States?

Q. Yes.

A. It is about 6500 proprietors and about 123,000 lanes.

Q. And your association represents approximately half of that, is that what you said?

A. That is correct.

• • •

[1425]

Q. Now, sir, when did you first become a member of the Professional Bowlers Association of America?

A. I can't tell you the exact year. It was in, I think, 1958, 1959, I'm not sure exactly when it was organized.

Q. When did you first hold a directorship or office in that association?

A. You say the Professional Bowlers Association?

Q. No—did I?

A. Yes.

Q. I'm terribly sorry. The BPAA, Bowling Proprietors Association of America.

A. I first became a director in 1963.

Q. And in 1965 what function did you have in that organization?

A. I was a director.

Q. As a director of the association did you attend a meeting of that association in San Juan, Puerto Rico, during the year 1965?

A. Yes, I did.

Q. Can you tell us, sir, from your memory whether or not anything unusual happened in the course of that meeting?

A. Mr. Hanigan of the Brunswick Corporation made an announcement which caused a great stir, indicating that

[1426]

Brunswick was entering into the bowling center operation business.

• • •

[1438]

Q. Mr. Golobic, were you present at the meeting in San Juan?

A. Yes, I was.

Q. And did you become familiar with 14 points made by Chairman Hanigan of Brunswick at that meeting?

A. Yes, I am—I was.

Q. And addressing yourself to the meeting in San Juan in 1965, did Mr. Hanigan address the meeting there?

A. Yes, he did.

Q. And was his address made in an open assembly of the meeting?

A. Yes, it was.

Q. Was the membership represented in any sizeable number at that meeting in San Juan?

A. Yes, it was.

Q. Can you give us any estimate of the number of representatives there?

A. No, I'm sorry, it was probably 300 people.

Q. Was the address of Hanigan made in a big

[1439]

hall of some sort?

A. Yes, it was.

Q. Where is that, do you know the place?

A. The Sheraton Hotel, I believe.

Q. Was it the main dining room or ballroom of that hotel?

A. Ballroom.

Q. And does your recollection tell you whether or not that ballroom was filled with people when the remarks were made?

A. I believe so.

Q. Do you have in your hand a copy of the Bowling Proprietor magazine?

A. Yes.

Q. What is the date of that, sir?

A. July-August 1965.

Mr. Hoffmann: Your Honor, the witness has in front of him P-27, Plaintiff's 27 in evidence, and I want to ask him some questions as to that document has it has been admitted.

Q. Now, looking at that magazine report—may I see it for a moment?

A. Yes.

Q. Would you hold it up, please?

Mr. Hoffmann: May we have a stipulation that

[1440]

this magazine report is the same as P-27?

The Court: Mr. McNeill?

Mr. McNeill: It appears to be, yes.

Mr. Hoffmann: Will you take a look at it, please?

Mr. McNeill: Yes, it is the same.

Mr. Hoffmann: Thank you.

By Mr. Hoffmann:

Q. Now, does that Bowling Proprietor report of Hanigan's remarks fairly report the remarks as you heard them in 1965?

A. It says that they are the literal report as he said it.

Q. Do you have any contrary recollection?

A. No.

Q. In other words, do you think this report to be accurate?

A. Yes, I do.

Q. In reporting the remarks that you heard there; is that right?

A. Yes.

• • •

[1455]

MORNING SESSION.

(The following proceedings were had without the hearing or presence of the jury:)

The Court: Before court adjourned yesterday the question of the admissibility of a certain corporate resolution arose.

The resolution reads as follows:

"Resolved, that we, the members of the Bowling Proprietors Association of America, hereby express our grave concern that the incursion of the Brunswick Corporation into the area of operation of bowling centers in direct competition with members or non-members of this Association is not in the public interest and is injurious to competition based upon its pre-eminent position as a manufacturer, supplier, major creditor, and financier of the bowling industry."

In this Court's view this statement is inadmissible because it is, one, not rationally based on the perception of the witness; two, is not helpful to the trier of the fact on the determination of the issue in question.

As support for its ruling the Court cites Wigmore On Evidence, Sections 1917 and 1924,

[1456]

McCormack On Evidence, Section 12, Jones On Evidence, Section 14.2, 14.3, Rule 701 of the Proposed Federal Rules on Evidence, and Rule 56-1, 56, Subsection (1) of the New Jersey Rules on Evidence.

The Court will permit the witness to testify to the fact that the resolution was passed, and expressing grave concern on the part of this association over the incursion of Brunswick into the operation of the bowling centers, but not the contents of the resolution itself.

So ordered.

Bring the jury down, please.

REX MARTIN GOLOBIC, having been previously duly sworn, resumed the stand and testified further as follows:

(The jury entered the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

The Court: You are still under oath, Mr. Witness, right?

The Witness: Yes, your Honor.

Q. Mr. Golobic, you will recall that at the

[1457]

close of yesterday's session I was asking you questions concerning the so-called 14 points read by Mr. Hanigan at the meeting in San Juan, Puerto Rico, in 1965?

A. Yes.

Q. I'd like to address your attention a little bit further to those points.

Would you be good enough to look at point number 4. You will find it on the second page.

A. Yes.

Q. The first part of it, "Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in each case that the location could support such establishment without imperiling the business of any existing establishment in the area."

Do you know what that means?

What does it mean to you?

A. I really don't think it means anything because based on the surveys that were made in the '50's and '60's when centers were being installed, it seemed like the surveys could be made to say almost anything anybody wanted them to say, and as a consequence, I really don't think that number 4 said anything, because

[1458]

surveys are surveys, who collects the data and how it is presented indicates—can indicate almost anything.

Q. Would you look at item number 9, please:

"Any advertising or promotional aid given by Brunswick Corporation to its own bowling establishments apart from local advertising or promotion charged to the operating expenses of such establishments should be made available on a proportionately equal basis to all other bowling establishment operators who are Brunswick customers."

Sir, what does that mean to you?

A. Well, I understand what it means, but it doesn't seem to me like it ever operated very well because I cannot recall——

Mr. McNeill: Excuse me, your Honor. The question was what does it mean. The witness gave the answer. I think he should wait for the next question.

The Court: Would you read that back, please?

(Record read.)

The Court: "I understand what it means," period. The rest of the answer will be stricken and the jury will be instructed to ignore it.

[1459]

By Mr. Hoffmann:

Q. Mr. Golobic, in your opinion, has this operated, in fact?

Mr. McNeill: I object to this, your Honor, as asking for an opinion as to what actually happened. It hasn't been established that the witness has any knowledge one way or the other as to whether at this particular point it was operative.

The Court: Mr. Hoffmann.

Mr. Hoffmann: Your Honor, I thought it had been well established yesterday that this witness, who is the president of the Bowling Proprietors Association of America, who has held numerous offices in other associations, who travels around the country for these associations, has been made well aware of conditions in the bowling industry, and if anyone is entitled to have an opinion it would seem to me that he has.

But in order to avoid the problem, it seems to me, I can simply ask him whether, in his own experience, this provision has operated.

The Court: I will sustain the objection. I will permit the first question to be answered. Perhaps he has experience throughout the country,

[1460]

too. I will permit that question to be answered. Based on your own experience.

Q. Based on your own experience, has this provision operated, in fact?

A. One of the large programs that Brunswick has put out for their own bowling centers is a program where

a trip to Europe is offered as a prize. And at no time has anyone ever offered me part of that program in one of my bowling centers.

Q. So that when reference is made in nine to the advertising or promotional aid of Brunswick being made available on a proportionally equal basis to all other bowling establishment operators, who are Brunswick customers, can you say from your experience whether or not such advertising aids were made available to you?

A. No, they were not.

Q. Now, sir, what did you take was the meaning, the main sense that was being conveyed to you by the remarks of Mr. Hanigan in that meeting in Puerto Rico in the Summer of 1965?

The Court: You heard my ruling on that, right, Mr. Witness? You were in the courtroom when I made my ruling?

The Witness: Yes, your Honor.

Q. What was Mr. Hanigan conveying, as you under-

[1461]

stood it, in the course of that meeting of the proprietors in 1965?

A. Mr. Hanigan was telling us that he had heard a great number of objections to Brunswick entering into the operation of bowling centers, and that he had heard that many proprietors were disturbed about the subject, and, as a consequence, he had gone to his legal counsel and asked him to tell him how they could operate bowling centers without getting in trouble with the law.

Q. And did you understand that the statement made by Mr. Hanigan was such statement, he was telling proprietors how they could do that, how Brunswick could do that?

A. That's what he was telling us, yes.

Q. How was this statement of Mr. Hanigan's received by the proprietors, sir, was there any reaction at that meeting?

A. Well, the proprietors——

Mr. McNeill: Your Honor, I will object to that, unless it is more carefully asked.

The Court: I will sustain it as to form. Rephrase it.

Q. Tell me, Mr. Golobic, what happened after Mr. Hanigan sat down, do you remember?

[1462]

A. A great deal of discussion occurred among the people who were there in the audience about Mr. Hanigan's remarks.

The Court: Was there clapping?

The Witness: No, sir.

The Court: No applause.

The Witness: It was a very dead silence, I must say.

A. (continuing) And the discussion continued throughout the balance of the meeting, and eventually resulted in a unanimous passage of a resolution in which the Bowling Proprietors Association expressed grave concern in the incursion of Brunswick into the operation of bowling centers.

[1463]

Q. Tell me, was that resolution adopted by the association?

A. Yes, it was adopted unanimously.

Q. Did that resolution constitute a statement of policy of the association?

A. Yes, it did.

Q. Is that policy still in effect?

A. It has been discussed many times and it has never been rescinded. In fact, there has been very great movement toward making it more——

Mr. McNeill: Your Honor, I——

The Court: Just a minute.

Yes. I am listening.

Mr. McNeill: I move to strike——

Mr. Hoffmann: Can't we have the end of the answer before he moves to strike it?

The Court: What did he say so far?

(Incomplete answer read.)

Mr. McNeill: Your Honor, this answer should be stricken. A simple answer to the question is: No. When the witness begins to testify about discussions outside the presence of any representatives of Brunswick, we have a hearsay problem.

Mr. Hoffmann: Your Honor, it is a new rule to me, not supported by any authorities that I know

[1464]

of, that the witness is required to make simple answers to questions. Maybe certain witnesses only can make simple answers to questions. But I know of no such rule of evidence.

The witness is making an explanation, he is telling what happened. Either his answer is objectionable, in terms of established rules of competency, relevancy, materiality, or it is not objectionable at all. It is not objectionable at all, it seems to me, with great respect——

The Court: I will permit him to answer, subject to it being stricken.

Do you want your answer so far?

The Witness: Yes, please. I don't remember it.

(Incomplete answer re-read.)

A. (Continuing.)—in detail and more stringent in its concern about the incursion into the operation of bowling centers.

The Court: I will permit it to remain.

By Mr. Hoffmann:

Q. Now, Mr. Golobic, what are your duties as president of the Bowling Proprietors Association of America?

A. I travel around the country and attend meetings on

[1465]

a great many different subjects, participate in forums for the National Bowling Council, participate in the business of our association.

For example, we are now buying a piece of property and moving our office. I travel to Texas for that subject. I am going to speak before the American Bowling Congress and the Women's International Bowling Congress.

Q. You are also a proprietor of bowling centers, are you not?

A. That is correct.

Q. About how much of your time is devoted to the activities of the Bowling Proprietors Association of America?

A. At least 50 per cent of the seven-day week.

Q. And in that 50 per cent you travel about the country speaking to bowling proprietors, is that right?

A. Yes, I do.

Q. And in the course of doing that, do you, as the representative of the Bowling Proprietors Association of America, as the president of the association, receive reports from proprietors as to the state of affairs in the bowling business?

A. I receive reports and complaints, probably more complaints than reports.

Q. Do you receive the complaints pretty regularly

[1466]

when you travel around?

A. Yes, it is almost always a subject of discussion of a complaint of some kind, about either the operation of the association, or of our suppliers, or of the media, or something of that kind.

Q. Were you present at an association meeting in the following year after San Juan, in 1966, in San Diego, California?

A. Yes, I was.

Q. At that meeting did the members of the association take the floor and speak about the subject of Brunswick coming into the bowling business, the bowling operating business?

The Court: I will permit an answer yes or no.

A. Yes.

• • •

[1480]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(The following question was read back by the court reporter:

"Question: Did you receive at or about that time, at about the time of San Diego, any reports or complaints from members of the association concerning the presence of Brunswick in the bowling operating business?")

The Court: Answer that yes or no.

The Witness: Yes.

The Court: Now I will permit you to ask him based on his experiences. No hearsay.

[1481]

By Mr. Hoffmann:

Q. Carrying on after that time and carrying on to the present, have you received similar complaints?

A. Yes, I have, our people are afraid—

The Court: Just a minute. Don't volunteer any information.

That will be stricken and the jury is instructed to ignore it.

He said "Yes."

Next question.

Mr. Hoffmann: He said, "Yes—"

The Court: Well, I don't want to repeat it in front of the jury because I don't think they heard it, but I did.

"Yes." The rest will be stricken.

Q. Tell us, there has been a good deal of testimony here about leagues and teams and league bowling. What is a league?

A. A league is a group of people who band together in teams and bowl in competition each week.

Q. Is there any customary number of teams in a league?

A. Yes—number of teams?

Q. Yes.

A. I would say that the number ranges generally from

[1482]

eight to sixteen teams.

Q. Now, is there any custom or tradition, standard, in the industry, having to do with the question of whether or not league bowling should take place all at one time?

A. Yes. Many years ago when the American Bowling Congress was first being formed, in setting up their rules there was a controversy between the part of the organization that was based in the New York area, and the part of the organization in Chicago.

In New York the custom had been for two teams to bowl at a time, and leagues might have 40 or 60 teams, and two teams would bowl at a time, and many times it took more than a year for each—for one team to bowl all of the other teams in the league.

In Chicago, the custom had been for all of the teams in the league to bowl at the same time. And this was eventually the rule that was adopted, that all of the teams in the league would bowl at the same time.

[1483]

Q. What organization adopted that?

A. American Bowling Congress.

Q. In your experience is that rule generally followed?

A. Yes.

Q. Now, sir, suppose the existence of a bowling center with some of the lanes on one floor and other lanes on

another floor; is that the kind of a situation that could happen?

A. Yes. I have an establishment that is made up that way.

Q. Now, can you tell us from your experience whether or not if there are so many teams in a league, that they cannot all play at one time on one floor, whether the fact that they have to break up and play on two floors will discourage their coming to your center?

A. We have had occasions where leagues have attempted to do that with part of their teams bowling on one floor and part on another, and almost invariably they either leave our center or else they contract the number of teams so that they all fit together.

Q. What is the reason for that?

A. Well, the basis of league bowling is competition, and they all like to see how the other teams are doing.

[1484]

The team in first place likes to see what the team in second place is doing, and if they are on separate floors they can't see what anybody else is doing.

Q. Now, then, can you tell us from your experience whether if you have a vast expanse of lanes on the same floor, but the colonnade is broken by pillars, and for the league to bowl all at once it is necessary for the teams to bowl on both sides of the open center area, in such a situation would that deter leagues from coming to the establishment?

A. We have a center in San Francisco, Daly City, that has that sort of situation, and they have a great deal of difficulty scheduling the teams to bowl even though the only thing they'd be separated by was a wall.

Q. In terms of your experience, can you tell us what is shown as to the way bowling patronage breaks between open and individual bowling, and league bowling?

A. At present in my experience it breaks about 40 percent open play and 60 percent league play.

Q. And by "open play," what do you mean?

A. I mean non-organized play, but people coming in to practice or bowling socially. Not in league play.

Q. Now, in the course of an evening, how many games, if you know, are played in a league match?

[1485]

A. If it is a five-man team, generally each bowler bowls three games.

Q. And does that mean that there have been 15 games for each team?

A. Yes, it does.

Q. And then in a match, if there are two teams meeting each other, there would be 30 games; is that right?

A. That's right, on a pair of lanes.

Q. What is the average time that elapsed in the playing of a game with A-1 Brunswick pinsetter equipment?

A. Two and a half hours.

Q. And how about for the individual game, that is, the individual bowler bowling his ten frames?

A. There are about six games bowled an hour on a lane average, so if they bowl 15 games an individual, one individual would take about 10 minutes to bowl a game.

Q. And does there exist any difference, timewise in having a league match when A-1 equipment is used and A-2 equipment is used?

A. Yes, there is.

Q. Can you give us any estimate of that?

A. I would say that the A-2 could speed the league

[1486]

match up by 15 minutes or 20 minutes.

Q. Are you familiar with the Brunswick automatic scorer?

A. Somewhat, yes.

Q. Have you seen it in operation?

A. Yes, I have.

Q. Could you describe it for us, please?

A. It is a machine that keeps score on four lanes simultaneously.

It projects the score above each lane.

The bowler--the score is kept automatically.

Q. Pardon me, my colleague says he has a little trouble hearing you.

A. I'm sorry.

It is a machine that keeps score on four lanes simultaneously, and the score is projected above each lane, and the scoring is automatic, except for the fact that the bowler must move a lever to his position on the--in the bowling match.

Q. Does this eliminate the old chalk and the blackboard that I knew a hundred years ago when I was younger?

A. Yes.

Q. Paper and pencil scoring on sort of a pad?

A. Yes.

[1487]

Q. Errors in arithmetic, are they eliminated; do you have to compute a spare as a strike and an eight pin going down, or something like that?

A. Most generally.

Q. Do you look up and see what the score is?

A. That's right.

Q. Is that an expensive piece of equipment, do you know?

A. Yes, it is—I think it is.

Q. Do you know how much it sells for?

A. About $12,000 for a machine that covers four lanes.

Q. Are you able to install such equipment in your own bowling centers?

A. Yes, I could.

Q. Have you done so?

A. No.

Q. Why is that?

A. I haven't felt like I could afford it.

Mr. Hoffmann: Excuse me one second, your Honor.

Q. You have in your hand a pamphlet called, "Let's Talk Facts"?

A. Yes.

Mr. Hoffmann: May we use the exhibit——

The Court: Designated as Exhibit P-28?

[1488]

Mr. Hoffmann: Plaintiff's 28. Pamphlet called, "Let's Talk Facts."

Q. Have you ever seen this or a copy of it in the same identical form before?

A. Yes. I received a copy of it at the Bowling Proprietors Association convention in San Diego in 1966.

Q. Have you had occasion to examine it, think about it?

A. Yes, I have.

[1489]

Q. I address your attention to page 5 of Plaintiff's Exhibit 28.

I read, "Brunswick's policies that are the subject of this report were developed after two years of careful top management consideration and it has since been in effect for 18 months. We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor."

Can you tell by looking at these facts what the policies are to which this reference is made?

A. Yes. This is a reiteration of—of a repeat of 14 points in general that Mr. Hanigan had told us about the previous year.

Q. Now, addressing yourself to the sentence which says:

"We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor," tell me, Mr. Golobic, did you find these Brunswick policies beneficial to you as a proprietor?

Mr. McNeill: Your Honor, I object to the question. There has been no foundation laid as to whether the policies ever affected Mr. Golobic in his business one way or the other. And if the question is meant to ask for his opinion as to how these policies may have affected others, I would

[1490]

object on the grounds of incompetent, irrelevant opinion in this matter.

Mr. Hoffmann: Certainly there is nothing in the question which had anything to do with anybody other than Mr. Golobic.

The Court: Lay the foundation with regard to what policies you are speaking about.

I will sustain it.

Mr. Hoffmann: I had asked the question—

The Court: Are you familiar with the policy, and he said the 14 points.

Mr. Hoffmann: Yes.

By Mr. Hoffmann:

Q. Would you look, please, at the index for "Let's Talk About Facts," it is found right on page 5.

"The general fact, one, Brunswick is protecting your investment in the bowling industry."

Then "Fact 2, Brunswick is enforcing conditions of sale.

"Fact 3, Brunswick has found it necessary to operate bowling centers.

"Fact 4, BCO centers are offered for sale.

"Fact 5, Brunswick is the Number 1 name in bowling," and then something called a closing statement.

That's the index, is it not?

[1491]

A. Yes.

Q. Then if you just quickly go—flip to it, you find further headings:

"1, a firm price policy, a firm down payment policy."

These are matters referred to in the 14 points about which there was testimony earlier, are they not?

A. Yes.

Q. These are legal standards under which Brunswick said it would operate its bowling center business; isn't that so?

A. That's right.

Q. And then "Down payment plans, 30 per cent or more, 15 per cent plan," and then a great big heading, "As a matter of fact, Brunswick is enforcing conditions of sale."

Then heading beneath, "Brunswick has found it necessary to operate bowling centers. What happens before BCO decides to operate, legal and ethical guidelines govern BCO operating policy."

Other headings, "Including lineage rates," and then "BCO centers are offered for sale, how is price determined?" Things of that order.

And then a heading, "BCO is benefitting the bowling industry."

[1492]

Can we pause here for a moment?

This is on page 15. The statement is made:

"It is also BCO policy not to hire management personnel away from other bowling centers, but to recruit and train new people."

Do you know, Mr. Golobic, whether or not BCO has in fact hired management personnel away from other bowling centers?

The Court: I will permit that.

A. Not to my knowledge.

[1493]

Q. The answer is you don't know?

A. No, I don't know.

Q. Now, coming back to the final page, 18, what is called in the index a summation, "To the bowling proprietor, there is but one purpose for this report, and that is to resolve in your mind the position of Brunswick in the

bowling industry today, that our position required clarification is clear. The preceding pages should bring this position into sharp focus and re-emphasize this point. Brunswick is not about to relinquish its title as the Number 1 name in bowling."

And then you notice beneath the signature of James F. Urbanek, president of the bowling division, Brunswick Corporation.

I ask you, sir, do you understand the meaning of the statement, "That our position required clarification is clear"?

A. Yes, I do. Their position as previously put forward wasn't believed.

Mr. McNeill: I move that that answer be stricken. That contains within it clear hearsay and opinion of others who are not present in this court.

Mr. Hoffmann: Your Honor, this document is in evidence. Shall we leave it with the ambiguity

[1494]

that Mr. Urbanek left the document in, or shall we explore what this witness——

The Court: Will you read that back, please?

(Record read.)

Mr. McNeill: Your Honor, this was put in by plaintiffs in the case, this statement of Brunswick, and there is nothing ambiguous or unclear about the text.

Mr. Hoffmann: Perhaps Mr. McNeill will tell us what Mr. Urbanek said when he said a need for explanation——

Mr. McNeill: I think it is highly improper. I have objected to this witness giving his opinion or stating what others opined about it.

The Court: The answer will be stricken, what they believed.

By Mr. Hoffmann:

Q. What do you believe, Mr. Golobic?

A. I thought that the first presentation left a great deal of doubt in my mind, and when I saw this folder I thought that some—that there be some doubt in Brunswick's mind that what they had said previously had been understood and believed.

Q. Did you know what was meant by the statement at the end of that paragraph, "Brunswick is not about

[1495]

to relinquish its title as the Number 1 name in bowling"; what does that mean to you?

A. Brunswick was the Number 1 name in bowling, and they expected to continue the Number 1 name in bowling, and so far as I am concerned, they still are.

Q. Well, now, we have gone through "Let's Talk About Facts," Plaintiff's 28 in evidence, and I bring it back now to the first paragraph that I asked you about on page 5, with reference to Brunswick's policies, "We believe that these policies are beneficial to everyone in the bowling industry, and especially to you, the proprietor."

How about you, you individually, you individually as a bowling proprietor, did you find these policies described in this pamphlet beneficial to you?

A. I couldn't——

The Court: Just a minute.

Mr. McNeill: I object. First of all, that's been asked and answered. And what this witness believes one way or the other about the beneficial effects or otherwise of all of these various policies and the various activities of Brunswick since 1965 or 1966 are incompetent and immaterial in this trial.

There has still been no showing that this

[1496]

gentleman in his business operations in San Francisco has been exposed one way or the other to any operations by a Brunswick operated bowling center.

He simply talked to others as far as the evidence so far goes.

Mr. Hoffmann: Your Honor, in response to Mr. McNeill's previous objection I have taken at least ten minutes of the Court's time in laying the foundation by description from the pamphlet itself as to what the policies described were.

As to Mr. McNeill's second objection, I have not asked Mr. Golobic about complaints of others or anybody but himself.

I asked him whether he, and I was very careful about it, whether he, Mr. Golobic, himself as a proprietor, had found these policies beneficial, and that's the question to which Mr. McNeill objected to.

It has got nothing to do with the complaints you are worried about or the actions of other people or anything of that sort.

Mr. McNeill: I think that perhaps Mr. Hoffmann misunderstands my objection.

As I understand the testimony so far, this

[1497]

gentleman as a bowling proprietor has business operations in the San Francisco area.

Now, before he can give an opinion one way or the other or state anything with respect to the various policies of Brunswick as an operator of bowling centers, some foundation must be laid that indeed he

has experienced competition by a Brunswick operated bowling center.

If, indeed, your Honor, he has not experienced any competition by a Brunswick operated center, how can he be competent, how can he testify about the experience he has had with Brunswick policies?

The Court: Yes, but in this P-28 that's been admitted into evidence there is a statement here on behalf of Brunswick, "We believe these policies are beneficial to everyone in the bowling industry, especially to you, the proprietor."

The witness is a proprietor.

Now he is asked the question, was it beneficial to you?

No, overruled. I will permit it.

You can cross-examine as to it.

Can you answer it?

The Witness: I didn't find it beneficial. In fact, I didn't——

[1498]

The Court: Period. You didn't find it beneficial.

The Witness: I didn't find it beneficial.

By Mr. Hoffmann:

Q. Did you find it hurtful in any way, the policies, to you as a proprietor?

A. No.

Q. Were they a matter of indifference to you, these policies?

A. No, they were a matter of great concern.

Q. And why was that, sir?

A. Because I was afraid that in the future they would become hurtful to me.

Mr. McNeill: I move that the answer be stricken.

The Court: Why? He said he hasn't been hurt to date, he is concerned about the future.

Mr. McNeill: Comments like that, as to what might happen in the future, or whether the chandelier may fall down, and so forth, are not competent evidence in this trial.

The issue is as to whether Brunswick has done something that offends the antitrust laws or whether indeed everything that has happened up to this moment has been well within the antitrust laws and

[1499]

proper business practices.

Mr. Hoffmann: Your Honor, the case involving loose chandeliers in which chandeliers fall and hit people over the head I would submit is quite relevant to the fact that somebody is worried about the chandelier being about to fall on him.

And this is a case in which we are concerned with the monopoly practices of Brunswick, and the witness apparently is concerned that the monopoly practices are about to fall on his head and hurt him.

The Court: I will permit it to remain. Next question.

(Record read.)

By Mr. Hoffmann:

Q. Now, did your fear have any specific outline, any specific concept that you can tell us?

A. I spent a great deal of time chasing down rumors that Brunswick was going to build a center adjacent to one of my centers, and was very afraid that they were about to.

I heard they had field representatives out looking for real estate and were contemplating building a center near me.

The Court: But it did not happen, right?

The Witness: It hasn't happened so far.

[1500]

Q. Mr. Golobic—excuse me one second—you agreed a moment ago in the statement of Mr. Urbanek's near the end of "Let's Talk Facts" that Brunswick is not about to relinquish its title as the Number 1 name in bowling.

Do you agree that Brunswick is the Number 1 name in bowling?

A. Yes, I do.

Q. Can you tell us the basis for that opinion?

A. In all my life in the bowling business, Brunswick has been the top supplier.

They have had the best equipment, they have had the best designed equipment, they have had the best looking equipment.

In my estimation they still do. And they have sold most of the market based on their superiority.

• • •

[1504]

CROSS-EXAMINATION.

By Mr. McNeill:

Q. Mr. Golobic, you are a bowling proprietor in the San Francisco area?

A. That is correct.

Q. And are you familiar with many bowling centers in the northern California area?

A. Yes, I am.

Q. Do any of those centers that you are familiar with have A-2 fast ball return equipment in them?

A. Yes, they do.

Q. Can you estimate the number or the precentage of centers that have A-2 equipment?

A. No, I can't.

Q. Is it more than a handful, more than a few?

A. There are several. I don't know—more than a few, yes.

Q. Are there other manufacturers of fast ball returns?

A. Yes.

Q. Are you familiar with the Zot fast ball return?

[1505]

A. Yes.

Q. And with QBR?

A. Yes.

Q. And with equipment called Fast Ball?

A. Yes.

Q. Are centers in the California area equipped with some of those machines as well?

A. Yes, they are.

Q. What about scorers; you testified a little bit about familiarity with the scorer—automatic scorer manufactured by Brunswick; have you seen any centers that contains such scorers?

A. Yes, there are two that I am very well acquainted with.

Q. In the California area?

A. Yes, Park Bowl in San Francisco and McHenry Bowl in Modesto.

Q. Is either of those centers operated by Brunswick?

A. No.

Q. Are there other manufacturers of automatic scoring machines coming on the market?

A. No, not that I—not automatic in the sense that the Brunswick machine is, so far as I know. I haven't seen any.

[1506]

Q. I see.

Mr. Golobic, do you believe in promotional efforts by bowling proprietors to help increase their business?

A. Absolutely.

Q. Over the years have the local and national association of bowling proprietors participated in various promotional—group promotional efforts?

A. Yes, definitely.

Q. Has Brunswick helped support such efforts, locally and nationally?

A. Yes.

Q. Have they also helped contribute to the local promotion in the California area which results in bowlers—some bowlers qualifying for a trip to Hawaii?

A. That I am not acquainted with.

Q. I see.

Sir, has the bowling business generally been good for the last year?

A. Yes, definitely.

Q. And getting better, in your opinion?

A. It has been getting better again since the first of January. We had a little downswing during last Fall. But it has been coming up again.

Mr. McNeill: Thank you, Mr. Golobic.

• • •

[1507]

Mr. Hoffmann: My colleagues, Mr. Agee and Mr. Zucker, with your Honor's leave, will read the deposition taken from Mr. Hanigan.

The Court: All right.

(Mr. Agee took the witness chair to read the answers to the questions as read by Mr. Zucker:)

• • •

[1510]

Mr. Zucker: "Mr. Hoffmann called Mr. Hanigan's attention to a portion of this memorandum of March 1966 which reads:

[1511]

"As we have discussed many times, the yearly five-year plan should be a constant objective of each division with almost daily thinking about the long-range aspects of your business.

"Is this your thinking that is expressed here?

"Answer: Yes.

"Question: And does it apply to the BCO division as well as to other divisions of Brunswick?

"Answer: Yes, sir.

"Question: And is it contemplated by this sentence that the division, BCO division should think of itself as having business with long-range aspects?

"Answer: Yes.

"Question: And by long-range, do you include the notion that the division's business might project beyond the period covered by the five-year plan due July 1st of that year, of 1966?

"Answer: Yes; it also might not.

"Question: Did you have in mind any period of duration for the Brunswick operation of bowling centers at the time of your sending out this memo-

[1512]

randum on March 17, 1966?

"Answer: No, sir.

"Question: Do you know now—do you have now?

"Answer: Not a fixed idea, no.

"Question: Well, do you have any idea that Brunswick will in the future go out of the operation of bowling centers?

"Answer: I haven't really come to any conclusion.

"Question: That is an open question within the councils of Brunswick?

"Answer: Yes, sir.

"Question: I address your attention to 8 for identification, did I understand your testimony before to be that you had not seen this before?

"Answer: I don't recall having seen it.

"Question: Would I be correct in my characterization that it appears to be a draft or a statement of objectives to be included in the 1966-'71 five-year plan?

"Answer: That's what it appears to be.

"Question: You have no knowledge at this time of who the author of this document is?

"Answer: No, sir.

[1513]

"Question: If it is important for us to find that out, can you tell what person in your organization would best know who authored this document?

"Answer: I would expect Mr. Rudo, Milton Rudo.

"Question: And what is his function—pardon me, what was his function in the organization in 1966, March?

"Answer: Well, he was manager of the bowling center operations, for sure, and may have at that time, I am not sure, also been responsible for the operation of the bowling division. I am not exactly sure when that additional responsibility—

"Question: Does he still possess those functions?

"Answer: He does."

Mr. Zucker: "Turning again to this attachment to the Hanigan memorandum.

"Question: Now, would you be good enough to address your attention to 8 for identification again, and notice, please, the language appearing after the listing on number of establishments for domestic and Canadian: 'These establishments will

[1514]

be available for private interests to purchase and operate in the year 1967. In 1970 and 1961 much of our projection includes new installations using used equipment.

"Do you know whether in fact these establishments referred to were available for private interests to purchase and operate in the year '67?

"Answer: They were.

"Question: And can you tell us from your memory whether private interests did in fact purchase

and operate some of those establishments during that year?

"Answer: My memory is faulty, but some establishments were purchased by private interest; whether it was '67 or '66, I cannot remember.

"Question: Are you able to tell us how many?

"Answer: No; but few.

"Question: And who could best tell us who those few, or what those few were?

"Answer: Mr. Rudo; Mr. Milton Rudo."

Mr. Zucker: "Starting at page 24 Mr. Hoffmann asked the question of Mr. Hanigan—

"Question: In between the submission of five-year plans, are there meetings from time to time to consider projections of business into

[1515]

the future, that is to say, past the existing five-year plan?

"Answer: There are sometimes meetings to try and determine the directions the business should take.

"Question: Well, when a five-year plan is submitted, is it voted upon for adoption summarily?

"Answer: No.

"Question: Is it submitted for your approval as president of the company?

"Answer: It is submitted to a group, which changes from year to year. It is not approved formally, but many times it is disapproved by being sent back to be reconsidered.

"Question: Is there, in the event of such disapproval, a final forging or working out of a five-year plan that meets with the approval of the group?

"Answer: Yes, yes.

"Question: And when a five-year plan is approved by the group, does that have any operative force? Is it regarded, say, by managerial people as a charter for what the division should do during the ensuing five years?

[1516]

"Answer: There are two documents which are prepared by the division. One is the five-year plan, which is a plan subject to change without notice. There is also a budget for the ensuing year which is a commitment on the part of a division manager that he will produce so much in the way of operating margin. But a plan being a plan, the only sure thing about it is that it will be changed.

"Question: This group to which the plan is submitted, what is its—who are its members?

"Answer: It varies from year to year. It always includes members of my staff, the comptroller of the corporation, the financial vice president, the administrative vice president, vice president for engineering, senior vice president, and three or four managers of the operating division."

Mr. Zucker: "Turning to page 35, Mr. Hanigan is referred by Mr. Hoffmann to the five-year plan previously referred to which was prepared during the middle of 1965 and projected Brunswick objectives for the five years 1966 through 1970.

"Question: Again, sir, if you will turn over to the next page where you have—I am

[1517]

sorry, turn over two pages, where you have 'B-Plans for Meeting Objectives,' objective No. 1.

"Answer: Yes.

"Question: I note the block type heading, has the bowling operating division of Brunswick realized that objective, that is to say, to become the domestic, Canadian and International retail operating division for Brunswick?

"Answer: It is not operating internationally, no, sir; unless you consider Canadian international.

"Question: But in other respects, that is, domestically, in Canada it is the retailing operation?

"Answer: It is.

"Question: Looking to the Item A, 'During '65, we plan to acquire and operate a hundred five bowling establishments, and so forth. Do you know whether that was realized?

"Answer: I believe it was, approximately, I don't know exactly how many were repossessed and operated.

"Question: And next, 'We should have all key positions of the division staff filled in '65.' Can you tell us whether key positions were provided for the division sufficient to handle

[1518]

more than the hundred five bowling establishments in the United States and Canada during that period?

"Answer: No—actually, you can't cut a controller in half; and consequently, we are all under-staffed to some degree at this time.

"Question: Would the same be true if you handled more bowling establishments than you now have?

"Answer: If we handle more bowling establishments, we would not have to add staff.

"Question: And just as you can't cut up a controller, can you tell us how far you can extend a controller to take on additional bowling establishments?

"Answer: I cannot.

"Question: How about other key personnel, have you any judgment about how far they can go without addition and handle additional establishments?

"Answer: It would be my opinion, and it is only an opinion, that the BCO might be able to handle, oh, sixty to a hundred percent more than the hundred and sixty or seventy establishments that they are now handling.

"Question: Is it also your opinion that

[1519]

there is now in this division a number of skilled people experienced in the operation of bowling centers and also in handling home office problems in connection with such operations?

"Answer: Yes, sir.

"Question: Would you address yourself to little (b) on that page.

"Answer: Yes.

"Question: Can you tell us whether I am correct in understanding from your previous testimony that Brunswick has abandoned the suggestion that it move world-wide in operating bowling establishments?

"Answer: We are operating bowling establishments world-wide.

"Question: Other than in the United States and Canada?

"Answer: Yes, sir.

"Question: Then——

"Answer: BCO is not doing it, however.

"Question: This is another division of Brunswick which does it?

"Answer: The International Division.

"Question: Can you tell me how many countries of the world Brunswick operates bowling

[1520]

centers in?

"Answer: I have never counted, but it operates in the U. K.,"——

The Court: United Kingdom.

"Answer: —United Kingdom, Germany, France, Italy, Peru, Israel, that's all, I guess.

"Question: Do you have any knowledge or precise recollection of the total number of bowling establishments operated by the International Division outside the United States?

"Answer: 24.

"Question: Does that include or exclude Canada?

"Answer: It excludes Canada.

"Question: And how many does the bowling operating division maintain in Canada?

"Answer: I don't know; it is part of the hundred sixty to seventy that I talked about.

"Question: Suggestion (c), if we may call it that, on this page, 'By '67 the division should be prepared to operate other retail establishments such as marinas, golf course,' and so forth. Has that been done?

"Answer: We have examined marinas in some detail, but decided not to do it.

[1521]

"Question: Golf courses?

"Answer: The same is true of golf courses.

"Question: Are other retail recreational establishments"——

Mr. Zucker: "Moving to Page 41, the middle of the page, and continuing with the Brunswick five-year plan, prepared in the middle of 1965:

The Court: I think you ought to finish that question, or else strike it, one or the other. You just read the first part of that question at the bottom of 38.

Mr. Hoffmann: May I, your Honor, read the question?

The Court: Yes.

Mr. Hoffmann: "Other retail recreational establishments being operated by Brunswick, that is to say, other than bowling centers?"

Mr. Agee: Unfortunately——

The Court: I didn't want to leave it suspended.

Where are we now, Mr. Zucker?

Mr. Zucker: Page 41.

The Court: All right.

Mr. Zucker: "Question: Mr. Hanigan, can you turn over the pages, please, and find

[1522]

under 'B-Plans for Meeting Objectives,' objective No. 3 continued, and then it is subheading little (d), bowling imagine building plans.

"Answer: 3(b)?

"Question: (d) as in David, little (d).

"Answer: Yes.

"Question: And you will notice there a small Roman numeral 4.

"Answer: Yes, sir.

"Question: The A-2 conversions in the better houses in certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the bowling division sales.

"Answer: Yes, sir.

"Question: In respect to this phrase, 'aid in increasing revenue,' does that refer to A-2 conversions in houses maintained by the Brunswick Bowling Operating Division?

"Answer: I can't answer that question. Inasmuch as this is the BCO five-year plan, I would expect it is.

"Question: Do you know whether in fact the better Brunswick houses did convert from A-1 to 2 during the operation of this five-year plan?

[1523]

"Answer: Some of them have, but only when they were able to put them in at the same price that anyone else would have had to pay and could prove that they would be able to increase revenues sufficiently to give us a sufficient payback on the investment."

Mr. Zucker: "Now shifting to Page 47 of the transcript Mr. Hoffmann asked the following:

"Question: Does the bowling center operated—Brunswick bowling center operated house pay cash when it has a conversion into A-2?

"Answer: No.

"Question: Does it actually pay anything at all—

"Answer: On the books of the company.

"Question: Are book entries made?

"Answer: Yes.

"Question: Is there an entry made for interest, or is it recorded as a simple transaction entry?

"Answer: No, the interest, if you want to call it that, the cost involved in this, is included in the justification of the investment."

Mr. Zucker: "Stop on Page 48 and go to

[1524]

Page 49:

"Question: Do you know what is meant by the phrase starting after the comma, 'enticing competition to try to convert also'?"

The Court: Try to convert. Read it again, please.

Mr. Zucker: "Question: Do you know what is meant by the phrase starting after the comma, 'enticing competition to try to convert also'?"

"Answer: Reading the thing, I would expect that if it would increase revenues for us, it is our belief it would increase revenues for others and, therefore, would be in the interest of building a better image for bowling.

"Financially, I imagine, in a financial sense—

"Question: Isn't it also a fair and natural reading of this sentence that it would entice competition to try to convert also, and thus assist the bowling division sales by means of increasing the bowling division's sales of A-2 equipment or conversions?

"Answer: Oh, yes.

"Question: Isn't that the fair meaning of it?

[1525]

The Court: Isn't that the fair meaning of it?

Mr. Zucker: The fair meaning of it.

Mr. Agee: "Answer: I would expect so."

Mr. Zucker: "Moving now to the top of Page 51 from Page 50:

"Question: Mr. Hanigan, still the same subparagraph, can you tell us in respect of the better Brunswick houses what is meant by the competition, who the competition to such houses are, who or what?

"Answer: Competing houses, of course.

"Question: And by competing houses, do you mean the houses operated by others than the Brunswick operating division?

"Answer: Not necessarily, no; each manager is competing with whoever is in his geographical area.

"Question: Do you know of any geographical areas in which there are two bowling centers, two or more bowling centers operated by the Brunswick bowling operating division?

"Answer: I don't know.

"Question: Were you talking, then, just of the possibility of——

[1526]

"Answer: Yes.

"Question: It means that if there were, they might be competitive?

"Answer: Yes, that's right."

Mr. Zucker: "Moving from the bottom of Page 51 to Page 55:

"Question: Now, where the conversion is from A-1 to A-2, it is a conversion of the equipment owned or operated by one of the Brunswick customers, isn"t that true, as night follows day?

"Answer: Yes, if the conversion is on the site, yes, sir.

"Question: And those customers might well be the competitors of the Brunswick operated bowling centers which have A-2 equipment?

"Answer: Could be.

"Question: And then in enticing competition to try to convert, would it be reasonable to suppose that the author or authors of Roman 4 meant that by conversion or installation of A-2 equipment in Brunswick operated houses, they would create a competitive situation which would have the effect of enticing, that is independent proprietors, for example, to try to convert?

[1527]

"Answer: That's reasonable.

"Question: Indeed, the A-1 is a faster or more desirable—the A-2 is a more desirable and faster piece of equipment than the A-1?

"Answer: It is faster, but not necessarily more desirable.

[1528]

"Question: And when you say the latter, are you considering such variables of judgment as not necessarily more desirable because of the increased cost or fixed cost to the purchaser resulting from the conversion?

"Answer: I am considering that and other factors.

"Question: What would be some of the others?

"Answer: The way the house is run, and, therefore, how full it is, whether the proprietor would be able to take advantage of the increased speed by, in essence, runing more bowlers through his machine.

"Question: Otherwise stated, if there were insufficient bowling traffic—

"Answer: The A-2 might not be—

"Question: —the conversion might be unnecessary?

"Answer: It might not be to his advantage. On the other hand, it might attract more people to his house by being faster.

"Question: Now, from your knowledge, could you tell us that even on the assumption that the variables level off and it is to the customer's advantage to make the conversion, whether or not there are

[1529]

competitors of Brunswick operated houses who would be financially unable to convert from A-1 to A-2?

"Answer: I can't tell you that.

"Question: Who in the organization would be able to say?

"Answer: I don't think anybody can tell you that.

"Question: Well, if we knew the price of conversion, if we knew the number of lanes or number of pinsetting machines to be converted and we knew something about the capital position and cash flow of the customer, would you not be in a position to say?

"Answer: There are many competitors about which we don't have that information.

"Question: But there might some to which Brunswick does?

"Answer: Possibly.

"Question: And wouldn't that be particularly true if the customer had been in financial difficulties with respect to paying debts owed to Brunswick?"

The Court: Read that question over again.

"Question: And wouldn't that be particularly

[1530]

true if the customer had been in financial difficulties with respect to paying debts owed to Brunswick?

"Answer: We would have the information in some instances such as this; not in others."

Mr. Zucker: The afternoon session of the deposition has now commenced, and Mr. Hoffmann continues his examination of this particular witness on the Brunswick five-year plan prepared during the middle of 1965 for the five years of 1966 through 1970, and Mr. Hanigan is referred to subparagraph under the caption of "B-Plans for Meeting Objectives," and Mr. Hanigan replies that he has read that paragraph and Mr. Hoffmann asks:

"Question: Mr. Hanigan, I address your attention to the last paragraph, the last sentence of that paragraph, 'Consideration will be given to locating such new centers as interceptors to outlying competitively equipped bowling establishments where such an installation would prove profitable to Brunswick.'

"By 'competitively equipped bowling establishments' can we suppose the write means AMF establishments?

"Answer: I would think that it would be a

[1531]

good supposition."

Mr. Zucker: Moving now to Mr. Hoffmann's question on page 63 of the transcript, near the bottom of the page:

"Question: Now, there is the statement that consideration will be given to locating such new centers as interceptors. Can you tell me what the word 'interceptor' means in this context?

"Answer: I don't know. I would suppose it would be bearing your competitor to the punch by having a place there before he can put one there.

"Question: Now, the locating of such new centers as interceptors in order to beat A. M. F. to the punch, does this have anything to do with the salvaging of bowling centers?

"Answer: Not bowling centers, but bowling equipment.

"Question: And when reference is made to locating such new centers, is that a reference to equipment only?

"Answer: It is a reference to locating a center that will enable us to salvage equipment which has been repossessed and removed to a warehouse.

"Question: I address your attention to the

[1532]

sentence which comes before the sentence starting 'This effectively will put us in a position . . .'.

'In those cases where such an analysis—' this is after looking at the potential market for new installations—'indicates favorable market conditions, good site availability and limited competition and where private capital is not readily available to make the necessary investment, we will take the necessary steps to secure the property for the building of a Brunswick operated center.' Was that sentence approved by the group which approves five-year plans?

"Answer: In the sense that it was in this plan, yes.

"Question: And does that—is that declarative of a purpose or program which is being carried out by Brunswick?

"Answer: It has not been so far.

"Question: And how about the future, is such a plan in anticipation?

"Answer: If it will be profitable for us, we certainly will carry it out.

"Question: And if you carry it out, will that in some way be done in aid of salvaging debt ridden independent bowling operated centers who

[1533]

otherwise might fold up their business?

"Answer: I didn't understand the question."

Mr. Zucker: The question was read back by the reporter and the witness said:

"The Witness: It will be done in aid of salvaging debt ridden corporations which otherwise have equipment which is of no use to anybody but in the warehouse.

"Question: And that corporation is the Brunswick Corporation?

"Answer: The Brunswick Corporation.

"Question: The Brunswick Corporation.

"Answer: Yes.

"Question: I ask you to look, if you will, at the last sentence under that same general heading, and just before little (c), "Productivity.'

'In subsequent years, 1967 and after, an additional team of men will be assigned to develop new locations for BCO.'

"Has that been done?

"Answer: A team has been assigned.

"Question: And it has looked for the development of new locations for BCO?

"Answer: Yes.

"Question: And are the new locations which

[1534]

are being developed locations where there exists bowling centers run by independent proprietors?

"Answer: None are being developed.

"Question: Is the team of men functioning now in an effort to develop such new locations?

"Answer: Yes, sir.

"Question: And is the meaning of the answer to the previous question that the project hasn't reached that level of development?

"Answer: We haven't been able to find such a place that meets the criteria that are laid out here.

"Question: Does the search include suitable sites, real estate and the like where there does not now presently exist a bowling center operated by an independent proprietor?

"Answer: That is correct."

Mr. Zucker: At this point, your Honor, we had marked as an exhibit an exhibit that has previously been introduced into evidence. I believe it is the July or August, 1965, issue of the trade magazine "Bowling Proprietor" which reports Hanigan's presentation at San Juan at the B. P. A. A. convention in June of 1965 where Mr. Hanigan outlined his fourteen points which were referred to by Mr. Lieblich,

[1535]

and at the top of page 68 Mr. Hoffmann states, as follows, to Mr. Hanigan:

"Question: I address your attention to underneath the legend in small type, the statement 'Probably no single presentation during B. P. A. A.'s 33rd annual convention so thoroughly captured the interest of all B. P. A. A. members as the speech delivered by John L. Hanigan, president of Brunswick Corporation before an open session on June 24.'

"And then in addition to that, I ask you to look at the very bottom of the page, there seems to be a reference to the Bowling Proprietor. Are you familiar with a journal or magazine of some sort or record called the Bowling Proprietor?"

"Answer: I have seen it."

Mr. Zucker: Shifting now to page 70—

Mr. Dwyer: Can we have that reference to where you are going?

The Court: Page 70.

Mr. Zucker: First I would like to state for the record that references to the first five-year plan of Brunswick have been marked in this action as Plaintiffs' 60 for identification and the article in Bowling Proprietor Magazine of

[1536]

July-August 1965 have been marked as Plaintiffs' 104 for identification. At transcript page 70 Mr. Hoffmann asked the following question with respect to this magazine article which reports in Mr. Hanigan's presentation in San Juan in June of 1965 of Brunswick's so-called fourteen points.

"Question: If you will be kind enough to glance at the first column on the first page, I specifically address you to this: 'The first thing is our new policies. These consist of four different but related points. In the first place we have set up for our bowling equipment firm prices.'

"Did you say this matter which is attributed to you?

"Answer: Yes, sir.

"Question: Can you tell us what you meant by the phrase 'firm prices?'

"Answer: Well, by hearsay, at least, before I came with the Brunswick Corporation, it had been the practice to negotiate each installation on the basis of

competitive competition with AMF to get an order and for this reason prices on at least some of the equipment sometimes deteriorated in a sort of a bid situation. We at this time took the stand that we were going to set firm prices for

[1537]

both new and used equipment. This had been particularly true in the used field; and subsequently did so.

"Question: Now, you make reference to 'firm conditions of sale,' and you say 'These three policies, gentlemen, are to make sure that nobody in the bowling business gets from Brunswick a better deal than anyone else gets.'

"Is that a correct statement of your sentiment that was expressed at the time?

"Answer: Yes, sir.

"Question: Does that mean that interest rates and conditions of installment purchase in contrast between Brunswick and its customers were not open to the bargaining process?

"Answer: That's correct.

"Question: And did that policy also go in effect in December of '65?

"Answer: '64.

"Question: '64, I beg your pardon.

"Am I to understand from the matter quoted starting at the bottom of that second column, 'The reason that I say that these decisions and policies are

sound is because they are for the good of the whole industry. . . . and, therefore, they are good

[1538]

for us too.', that those two sentences there, Brunswick sets policies as to terms and conditions of sale and as to prices with its primary consideration 'for the good of the whole industry?'

"Answer: Yes, sir.

"Question: And only subsidiarily the good of Brunswick, too?

"Answer: I think the two are intertwined.

"Question: You think they are intertwined?

"Answer: Yes.

"Question: And you do not give primacy to one or the other in conducting the affairs of Brunswick?

"Answer: In conducting the affairs of Brunswick, I want our company, of course, to prosper, and I think for it to prosper, at this time, particularly with the amount of money that the proprietors owed us, that it was necessary for them to prosper as well; so I say they are very much intertwined.

"Question: And for them to prosper, would it have been necessary for them to carry on in the business and see if they could create a positive cash flow, was that a prerequisite to the independent

[1539]

proprietors prospering?

"Answer: Yes, indeed.

"Question: Did there not come a time when the Brunswick operating—bowling operating division was created for the purpose of Brunswick going into the bowling operating business?

"Answer: The reason for establishing a bowling operating division was to salvage businesses which could be salvaged with proper operation and attention to the business, and in our opinion many places that were repossessed were closed down because they were not viable, in our opinion; others, and very many of them, were repossessed and sold to new proprietors.

"Question: When you say—I didn't mean to interrupt you.

"Answer: They were not all operated by the bowling operating center division."

Mr. Zucker: Your Honor, turning to page 76, Mr. Hoffmann refers Mr. Hanigan to a portion of this report on his fourteen points.

"Question: Addressing yourself to the paragraph starting 'we have . . .' —the paragraph containing 'We have decided in these cases,' and so forth, can you tell us what guides there are for

[1540]

the right answer is repossession?'

"Answer: This refers back to the point where we have extended him as far as we can, and he still can't pay us or won't, then you have two alternatives. One is to let him go on not paying, and the other is to repossess the equipment and in that situation of being faced with not collecting anything or letting him op-

erate for free, we think the right answer is to repossess.

"Question: Now, if you will be good enough to read on, or skip, if you would like, to the bottom of the second paragraph, on the second column—this may be not visually so accurate as the paragraph beginning 'When we are in trouble and a proprietor is in trouble we have four choices,' and so on, would you be good enough to read those choices, running on to the top of the next column.

"Answer: Yes.

"Question: When you say '. . . we can operate it and rehabilitate the business and sell it as a good business,' does this express a policy that Brunswick in the event it rehabilitates a business will sell it?

"Answer: Yes, sir.

"Question: And that is the Brunswick policy,

[1541]

is that correct?

"Answer: Yes, sir.

"Question: And was at the time when you made these remarks?

"Answer: Yes, sir.

"Question: Now, what if you operate a bowling center and you fail to rehabilitate it in the sense of making it into a good business to sell, is there any Brunswick policy as to how long this shall be carried as a bad business?

"Answer: Well, that depends on the definition of 'bad business.'

"Question: One in which there is what Mr. Rudo referred to as a 'negative cash flow?'

"Answer: We carry it as long as we are convinced that we will be able to convert it into a positive cash flow and eventually a profitable venture on a P&L basis. The moment we become convinced that this is not possible, we would shut it down.

"Question: And does it sometimes take a number of years to reach a conviction about that, one way or the other?

"Answer: Yes, sir.

"Question: And could that be as many as four,

[1542]

five, six years?

"Answer: Oh, I think not.

"Question: What would you think would be the outer reach of the time in which such a decision might be made?

"Answer: I would say two years, in the case of a negative cash flow."

Mr. Zucker: At this point Mr. Hoffmann refers Mr. Hanigan to exhibits which are essentially worksheets Mr. Lieblich prepared analyzing the operations of Dutchess Lanes again in the Poughkeepsie area for the years 1965 through 1967. At this point Mr. Hoffmann states as follows, at the bottom of page 79—incidentally, these worksheets have been marked as Plaintiffs' 53 for identification.

"Question: Making plain, first, that it was prepared by our office off sheets of information supplied by you to us.

"Do you have any knowledge of the history of that Dutchess Lanes in Poughkeepsie?

"Answer: Yes.

"Question: Do you have any reason to feel that during the reporting here, which indicates a loss in parenthesis, is inaccurate?"

[1543]

Mr. Hoffmann: "I have no way of judging that," is the answer.

The Court: The question was at the bottom of page 79, "Do you have any reason to feel that during the reporting here, which indicates a loss in parenthesis, is inaccurate?"

The answer is, "I have no way of judging it."

Mr. Zucker: "Question: Mr. Hanigan, premising those figures in parenthesis are accurate, is it consistent with the policy of Brunswick that Dutchess should be maintained this period of time with a negative cash flow?

"Answer: Could be, if we are convinced still that we can bring it through.

"Question: Do you have any knowledge one way or the other about such conviction in respect of Dutchess Lanes?

"Answer: I do not.

"Question: Do you have any knowledge of how many bowling centers now in operation by Brunswick are centers which show cash loss?

"Answer: No, sir.

"Question: If I suggested to you that as of the year 1967 there were eighty-six such centers, would you be shocked, surprised, or in any way upset

[1544]

by me suggestion?

"Answer: Not particularly.

"Question: Do you distinguish in your mind in terms of maintenance of the salvage operation between companies showing cash loss and companies showing a net loss?

"Answer: I do distinguish, yes.

"Question: Which would you regard as being in the poorer position?

"Answer: The one showing the cash loss, of course.

"Question: Do you have any idea of how many companies——

"Answer: You are talking about companies or operations, now?

"Question: I beg your pardon?

"Answer: You are talking about houses or companies?

"Question: I am talking about houses or centers, bowling centers operated——

"Answer: There is a distinction in some cases.

"Question: Yes, but it is not a distinction, I say, controlling now.

"Do you know how many bowling centers operated

[1545]

by Brunswick as of 1967 were operated with a net loss?

"Answer: No, sir; I know the whole operation had a net loss, on a P&L basis.

"Question: If I suggested to you that one hundred twenty-one out of one hundred ninety-eight had a net loss, would this shock you, disturb you or seem out of line in any way?

"Answer: No, sir.

"Question: Is there any limitation by way of policy which Brunswick has imposed upon how long it will maintain a center as a salvage operation?

"Answer: We will maintain it as long as it has a positive cash flow and we are convinced that we can eventually make—rehabilitate it and put it in a profit position.

"Question: And if it has a negative cash flow, would you maintain it if you think you may eventually be able to rehabilitate it?

"Answer: Yes, sir.

"Question: And will you do that indefinitely?

"Answer: Not indefinitely, no.

"Question: My question goes to that situation. Is there any policy as to how far it will be carried with a negative cash flow?

[1546]

"Answer: No, sir, no policy.

"Question: Do you in the instances of Brunswick operated bowling centers that have a negative cash flow consider from time to time the advisability of the alternative of offering the center for sale or just plum stopping operation?

"Answer: Well, inasmuch as we have firm prices for equipment, it would be an exercise in futility to offer it for sale if it had a negative cash flow; consequently we would close them down.

"Question: Well, do you consider the alternative of closing down from time to time as against the maintenance of those centers which show a negative cash flow?

"Answer: Yes, sir.

"Question: Do you do that periodically?

"Answer: Yes, sir.

"Question: Is that done by way of an exercise or corporate policy that——

"Answer: No, sir; it is done by the division.

"Question: Is it done by the division in terms of considerations of depletion of capital?

"Answer: It is done by the division, normally, at the end of a bowling season, because these places very often will have positive cash flow

[1547]

through the season; and if the division becomes convinced that they will never be able to rehabilitate the house, they close it down. If they are convinced they can salvage it, they continue to operate it.

"Question: Does a situation arise in which the division is convinced that a center can be rehabilitated but the negative cash flow is such and the period of time in which the negative cash flow has been experienced is such that it would seem to management to be too costly to rehabilitate it, has that situation arisen?

"Answer: I presume it has within the division; I have no knowledge of it.

"Question: It hasn't been called to your attention?

"Answer: No, and would not be.

"Question: Are these appraisals as to continuances made at the end of bowling seasons, did I understand you to say?

"Answer: Normally they would be."

• • •

[1548]

AFTERNOON SESSION.

The Court: If I understood you correctly before the recess, you are suspending your reading of the deposition of Mr. Hanigan to put a live witness on, right?

Mr. Hoffmann: Yes, indeed, your Honor.

The Court: Bring in the jury, please.

(The jury entered the courtroom.)

The Court: All right.

RUBEN A. DANKOFF, called as a witness on behalf of the Plaintiffs, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Dankoff, where do you reside?

A. In Tenafly, New Jersey.

Q. And where is your place of business?

A. I operate a chain of bowling centers, so I have a number of places of business.

Q. Where is your principal office?

A. In Tenafly, New Jersey.

Q. And you say you operate a chain of bowling centers. Under what name is that operated?

[1549]

A. General Bowling Corporation.

Q. What is your relationship to the General Bowling Corporation?

A. I am president, chief executive officer.

Q. And do the ten centers of the General Bowling Corporation—are they separately operated by different

corporations; the different centers owned by General Bowling Corporation, are they separately operated, under the names of separate corporations?

A. The bowling centers are not, but there are certain subsidiary operations within the centers, sometimes where there is a licensed lounge, or something, that may be operated as a wholly-owned subsidiary.

Q. Where are these centers located?

A. Three of them in Pennsylvania, three of them in Virginia, and two of them in Long Island, with a third in Long Island, which is not part of the chain.

Q. Are you familiar with the plaintiff corporation, Treadway; do you know Treadway?

A. Is that the same one that was once National Bowl-O-Mat?

Q. Indeed, yes.

A. Yes, I am.

Q. Does your company have any business or financial relationship with Treadway, or its predecessor

[1550]

companies?

A. No, sir.

Q. Do you personally, Mr. Dankoff, have any financial interest in any of the plaintiff corporations?

A. No, sir.

Q. Do you have any credit or debit arrangements with Mr. Lieblich, or any of the officials of the plaintiff corporations?

A. No, sir.

Q. Would you be good enough to sketch for us briefly your background, where you were brought up, educated and that sort of thing?

A. I was born and brought up in Rochester, New York. I went to college there. I went to law school.

I was graduated in 1935. I practiced law for about 20, 25 years, before I became tired of it and went into the bowling business and built a chain of bowling centers.

Q. In what year did you go into the bowling business?

A. 1956—I'm sorry. I went into it in 1955, but I started getting a chain in '56.

Q. Are you a member of the Bar, still?

A. I am a member of the New York State Bar, yes.

Q. Tell us please, about the corporation you mentioned earlier, the General Bowling Corporation,

[1551]

which has operated bowling centers, when was it organized?

A. I believe it came about by—organized in 1960 or '61. It was before I had anything to do with the company.

Q. And when did you first have something to do with the company?

[1552]

A. In 1964 I had built and was connected with another chain of bowling centers for a number of years before I had anything to do with General Bowling Corporation.

Q. What was that other chain, what was it called?

A. That was called Bowling Corporation of America.

Q. And did Bowling Corporation of America operate bowling centers?

A. Yes.

Q. How many?

A. About 16, about 16 at its peak.

Q. Did there come a time when you terminated your association with Bowling Corporation of America?

A. Yes, that was in 1964.

Q. And you have been with General Bowling Corporation ever since?

A. General, since 1964, yes.

Q. Now, sir, can you tell us whether in connection with General Bowling Corporation if you have been the active managerial official with responsibility for the operation of the different centers in the chain?

A. Yes, I have been the overall executive officer in charge of the operation of the bowling centers.

[1553]

Q. Now, have you, Mr. Dankoff, also been active in bowling proprietors affairs; I mean by that, in some other way than through the operation of your centers?

A. Yes, I have been very active in local, state and national associations of bowling operators and proprietors.

Q. Will you list for us what your associations are in this field?

A. Well, there are—they are all basically derived from the fact that we are members in local associations. For example, in Nassau County and Suffolk County on Long Island, the Alleghany County in the Pittsburgh area, and in the Fairfax County in suburbs of Washington, that's in the State of Virginia, and in Chesterfield County, Richmond, Virginia, through those local associations we are a member of the state associations of Virginia, Pennsylvania and New York, and through the State associations a member of the Bowling Proprietors Association of America, which is a national association.

Q. And were you a member of the Bowling Proprietors Association of America in 1965?

A. Yes, sir.

Q. Were you a member of any other associa-

[1554]

tion of bowling proprietors at that time?

A. In the three states that I mentioned, including the City of Washington.

Q. Can you name those local associations of which you were a member in 1965?

A. Yes. The Greater Pittsburgh Bowling Proprietors Association in Pittsburgh, Pennsylvania; the Washington Bowling Proprietors Association in Washington, D. C.; the Nassau County Bowling Proprietors Association in Long Island; and the Suffolk County Bowling Proprietors Association in Long Island, with the local ones.

[1555]

Q. Were you in 1965 a director or officer of any of these associations?

A. Would you repeat that?

Q. Did you hold office or were you a director in 1965 in any of the associations that you have named?

A. In 1965 I was a director of the Bowling Proprietors Association, elected by—from the State of Virginia.

Directors of the national association were elected from the various constituent states.

Q. Were you an officer or director of any of the other associations that you have named?

A. Yes. I have been officer and director of the Nassau Bowling Proprietors Association.

Q. Was that so in 1965?

A. To the best of my recollection, I was a director, not an officer, in that year, and the—I was a director of the Washington, D. C. association in 1965, I was committee chairman in—but not officer or director in other associations at that time.

Q. How big was your chain in 1964?

A. We had ten bowling centers at that time, and I had the eleventh, which was not part of the chain.

Q. How many centers does your chain have today?

A. The chain has eight.

Q. And is there still another center which you

[1556]

have an interest in which is outside of the chain?

A. Yes. That's in Valley Stream, Long Island.

Q. Now, Mr. Dankoff, did there come a time when you were made aware that Brunswick had begun to operate bowling centers through its bowling division?

A. Yes, sir.

Q. When was that?

A. In the month of December 1964, for the first time, other than rumor.

Q. How was this made known to you?

A. By the fact that Brunswick took over the operation of a bowling center which a couple of months before I had attempted to buy.

Q. What was the name of that center?

A. M-o-f-f-i-t-t Lanes in Brooklyn.

Q. You say that a couple of months before you had attempted to buy Moffitt Lanes?

A. Yes, sir.

Q. Can you tell us about that, please?

A. In October of 1964, having learned that the owners of Moffitt Lanes in Brooklyn, a 24-lane establishment, wanted to get out of the operating end of the business, I was put in contact with them, and after some negotiation, during which they gave me their financial statement and entire history of their operation, we arrived at an

[1557]

oral understanding of a deal whereby we would, our chain would take over Moffitt Lanes and its operation and remain as a tenant of the same—of the sellers.

The bowling center was located in a building in which they were also operating an oil business.

Q. Was that a center which had Brunswick bowling equipment in it?

A. Yes, sir. Only they were then heavily obligated to Brunswick for the balance of the purchase price of their equipment as well as in default of, I believe, one or two monthly payments, installments.

And in view of the fact that their agreement with Brunswick as an obligor of Brunswick required that if there is a change in obligors or someone taking over their obligation to pay Brunswick, it had to meet with Brunswick's approval, our understanding was not reduced to writing until I first wanted to have a talk with Brunswick representatives to make sure that we can satisfy Brunswick in that respect.

Q. Did you have such a talk?

A. I did.

Q. Where did it take place?

A. In Englewood Cliffs, New Jersey, where Brunswick then had its regional office.

Q. About when did it take place?

[1558]

A. To the best of my recollection, early in November 1964.

Q. Who was present in the course of your conversation?

A. Well, my conversation was with the person whom I thought, his name was Al Frecker, F-r-e-c-k-e-r, who was an officer of Brunswick and in charge of that, I believe it was called the Eastern Regional Office for the New Jersey-New York area.

Q. Now, would you tell us what your conversation with Mr. Frecker was?

A. Well, I advised Mr. Frecker that I had met with the principals of Moffitt Lanes, that we had arrived at a satisfactory, mutually satisfactory understanding for us to purchase their position in the operation of the bowling center, to take over his operation, and the Brunswick equipment in it, and—but before reducing it to writing I wanted to have the talk and tell them that it was our purpose to buy it, and I understood that they were a month or two delinquent in the monthly payments, that we were ready to pay that delinquency and cure it and bring it up to date, and to assume and agree to pay the entire balance of the obligation for the unpaid obligations for the Brunswick equipment.

And Mr. Frecker then stated to me what I had heard

[1559]

just about that time, that Brunswick had just recently changed its financing policies so as to require that people buying equipment or taking over obligations to Brunswick would have to make more substantial down payments then they had hitherto, and would have to make larger payments so as to increase their capital investment in the equipment.

And he said before Brunswick could accept us as an obligor, we would have to come within those new guidelines which Brunswick had adopted, just before that, some weeks before that, to my understanding.

And they were, of course, much stiffer than the terms of the agreement which they had with Moffitt Lanes, which had already been recast some months before I spoke with Mr. Frecker.

I then told Mr. Frecker that it would be impossible for us to be able to take over what had been a losing op-

eration and convert it to what I believed I could turn into a profitable operation unless we could continue with the same payment schedule as provided for between the owners of Moffitt Lanes and Brunswick, and we were, however, ready and willing and financially able to cure the delinquency immediately and to pay the balance over a period of years as provided in the existing obligation.

[1560]

He said no, they couldn't make an exception for us.

Q. Tell me—

A. So I then—

Q. I'm sorry, I didn't mean to interrupt you.

A. I then said to Mr. Frecker, "Well, supposing then that the corporation which is operating Moffitt Lanes, if I were able to arrange to buy stock of that corporation, instead of buying the equipment, and then you would have the same obligor, the same corporate obligor, merely different stockholders, and could we then continue with that corporation's obligations to you, as recast?"

And he said, "I would have to make inquiry about that and let you know what the policy is. It is the first time I have been faced with that question—and let you know."

And we left it that way. It was a very friendly meeting.

About three, four days, five days later, the principals of Moffitt Lanes contacted me and said they were no longer—

Mr. Seeley: I object to conversation.

The Witness: Yes, to conversation.

The Court: Wait a minute. Just a minute.

[1561]

I'm a lawyer, too. Please.

Read that part of the answer, please.

(Record read as follows:

"About three, four days, five days later, the principals of Moffitt Lanes contacted me and said they were no longer——")

The Court: Contacted me—period. The balance will be stricken.

As a result of that conversation, what happened?

A. (continuing) As a result of that conversation, we dropped all negotiations because they were no longer interested in selling.

The Court: All right. You might be getting in the back door what I wouldn't let in the front door, but I will permit it.

A. (continuing) And some weeks after that I learned that Brunswick had taken over the operation and was operating Moffitt Lanes, and they continued to operate it for some period of time before they eventually closed it up.

Q. Just a matter of weeks after you were unable to buy Moffitt Lanes, is that what you said?

A. That is correct.

Q. Brunswick took it over?

[1562]

A. Yes, sir.

Q. Tell me, sir, General Bowling Corporation, in December of 1964, was that corporation a solvent company?

A. Yes, sir.

Q. Operating a number of bowling centers—how many, again?

A. Ten.

Q. And was that the company that would have assumed the obligations to Brunswick of Moffitt Lanes?

A. Yes, sir.

The Court: Did I understand you to say that Brunswick closed it later?

The Witness: Yes, sir. I believe it was a year or a year and a half later they closed it.

By Mr. Hoffmann:

Q. Did you ever make any other unsuccessful attempts to purchase bowling centers?

A. Yes, sir.

Q. Any that involved the Brunswick Corporation in any way?

A. Yes, sir; in November of 1964, again the same—later in the same month that I had spoken to Mr. Frecker about the Moffitt Lanes acquisition, I was contacted by the owners or operators of a 48-lane bowling

[1563]

center in West Hempstead, Long Island, known as Royal Lanes. They said they understood that I was looking——

Mr. Seeley: I object.

The Witness: All right. I withdraw it. I'm sorry.

The Court: Never mind withdrawing it. It will be stricken. The jury will be instructed to ignore it. Try to remember that you are a witness.

The Witness: Yes, sir.

Mr. Hoffmann: Your Honor, I would like to find——

The Court: Go back and find the question. Perhaps not what was stricken, which I think was just a half a phrase.

He made a statement, "I withdraw it."

The Witness: I'm sorry.

The Court: All right. Repeat it.

(Record read as follows:

"In November of 1964, again the same—later in the same month that I had spoken to Mr. Frecker about the Moffitt Lanes acquisition, I was contacted by the owners or operators of a 48-lane bowling center in West Hempstead, Long Island, known as Royal Lanes. They said they understood

[1564]

that I was"—)

The Court: Sustained. No, no.

[1565]

A. (Continuing.) I entered into negotiations with them for the purchase of operation.

The Court: Royal Lanes.

The Witness: Royal Lanes; yes, sir.

The Court: All right.

A. (Continuing.) That was also what is known as a Brunswick house, because it was furnished with Brunswick equipment.

Q. How many lanes did you say?

A. 48.

Q. Where was it located?

A. West Hempstead, New York.

Q. And what happened then?

A. After securing their financial statements, and a record of their operation—they had been in operation only about two years at that time—we arrived at a complete understanding, financial understanding for a takeover, subject again to Brunswick's approval of ourselves as the new obligor.

There there was a much more substantial delinquency on the monthly payments. And, of course, since it was a larger bowling center, a much larger overall unpaid obligation for the equipment, almost $700,000.

And we agreed that I would go to Brunswick first, to find out if we would be accepted as an obligor in lieu

[1566]

of the existing one; and, if so, we would draw the contract to take over the equipment, the purchase price having already been agreed upon.

And so I called and made an appointment again with Al Frecker and met him at his office. At the same time, because—in the same conversation I spoke with him about two bowling centers, so I am going to the background of the second one—I had been in negotiation with the owner of a bowling center—I believe it was 32 or 36 lanes—in Elmont, Long Island, known as Elmont Bowlaire, where they had Brunswick pinspotters, or pinsetters, machines, but not Brunswick lanes.

And I discussed with them terms of a possible acquisition; came to no understanding with them at that time. But when I spoke to Mr. Frecker about the desire for the Royal acquisition, I also spoke with him about the possibility of our acquiring Elmont Bowlaire. And I wanted his reaction to our becoming the obligor for the pinsetters in Elmont and for all of the equipment in Royal Lanes.

Q. By obligor you mean a person who is going to pay, is that right?

A. Yes, the debtor is another word for it.

After the Elmont Bowlaire—he stated they had no objection whatever to our making any deal we wanted with

[1567]

the operators, because they were not interested in it as an operating location.

Q. By "they" you are talking about——

A. Brunswick. —and that if I could work out a satisfactory deal, Brunswick would accept us as an obligor on such a takeover.

However, as to Royal Lanes, he said, "You might as well forget about it. There is no possibility that we would accept you or anybody else as an obligor, or a debtor. That's a new place. It is a beautiful place. We are going to have our own operating chain of bowling centers and we want that place in it."

Q. When did he say this to you?

A. In November of 1964.

Q. That was prior to the association meeting in San Juan in June of 1965?

A. Yes, it was prior to a January '65 meeting, also, at which the subject was discussed.

I then said, "When was this decision made about Brunswick operating bowling centers as a chain?"

And he said, "This has been going through our minds for some time. This particular one we want to operate ourselves. And we will not accept you or anybody else as an obligor. There is no use of your even spending any time negotiating for it."

[1568]

I made this known—his conversation, the tenor of his conversation known to the principals with whom I had been negotiating, and we dropped all further negotiations.

They first said that they would speak with Brunswick about it. But we never were able to consummate the transaction that we had agreed upon verbally because we couldn't get Brunswick's approval.

However, Brunswick did not acquire that bowling center until about a year later.

The Court: Royal, you mean?

The Witness: Royal.

A. (Continuing.) A year later they finally made a deal with the operators and paid them some cash and took over the operation of Royal Lanes, and are still operating it, to the best of my knowledge.

The Court: What happened to Elmont?

The Witness: Elmont, I decided that the economics of the situation did not warrant our taking it over and we never entered into a contract to purchase it.

The Court: Nor did Brunswick?

The Witness: Brunswick eventually pulled its pinsetters—repossessed its pinsetters out of that place. And the owners of the building

[1569]

bought new pinspotters from AMF, the other manufacturer. And it is still in operation today, but not by Brunswick.

By Mr. Hoffmann:

Q. Did you hear, later on in San Juan, in '65, Mr. Hanigan deliver the 14 points of legal advice which Brunswick was going to follow; did you hear that?

A. Yes, I was present when he made the statement.

Q. And was one of these points which Mr. Hanigan made the point that Brunswick would repossess bowling equipment and centers, but that they would be made available for sale to independent proprietors?

A. Yes, Mr. Hanigan made that statement. But so did other Brunswick representatives, even before that.

Q. In your experience, in relation to that matter, does that indicate to you whether or not the statement was true or false?

Mr. Seeley: I object to that, your Honor.

The Court: I won't permit him to characterize it. You can ask what happened thereafter, if you want to.

Sustained.

Q. So far there were two occasions in which you tried to buy centers, is that right?

A. Yes, sir.

[1570]

Q. Unsuccessfully?

A. Yes, sir.

Q. Centers later acquired by Brunswick itself, isn't that right?

A. Yes, sir.

Q. Did you make any other effort to obtain bowling centers which proved unsuccessful?

A. Yes, sir.

Q. Tell us about that, did this involve Brunswick in some way?

A. Yes, sir.

Q. Please tell us about it?

A. I first want to correct a date. It's so many years that I need to refresh my recollection from notes.

The conversation with Mr. Frecker, with relation to Royal and Belmont, took place in March 1965, not in November of '64.

But in November of '64 there was another conversation with him relating to my negotiation for the purchase of another bowling center, called Roosevelt Lanes, in Roosevelt, Long Island. That was the one in November and I mixed up the two dates.

And there I came to a complete understanding with the operators of a Brunswick equipped bowling center—I don't remember how many lanes; It think it was 32——

[1571]

and on November 9, 1964, it was reduced to writing, in the form of a letter from me to one of the operators or owners of that bowling center. We came to a complete agreement on terms of acquisition, subject, however, to getting Brunswick's approval, because the owners of that bowling center, who were then also the owners of a 64-lane bowling center in Queens, known as Americana Lanes, were then involved in litigation with Brunswick over both of those bowling centers.

It seems that Brunswick had started to repossess the equipment in both of those bowling centers and on some legal technical basis their attorney was able to get an injunction against Brunswick—repossessing it. And while this was in the course of being litigated I entered into negotiations with them for the acquisition of the Roosevelt Lanes, subject to being able to work out the terms with Brunswick.

In November, 1964, within a few days after I wrote the letter to them, setting forth the terms of the understanding that was dated November 9, I had a meeting with Mr. Frecker, and told him that we had arrived at an agreement, and this might be a good opportunity for Brunswick to end the litigation respecting that bowling center, if he and I could agree upon the terms that Brunswick would accept for the payment of

[1572]

the Brunswick equipment in that bowling center, we would then take over and become the operators.

[1573]

And Mr. Frecker then said to me that, "Roosevelt Lanes is a very bad bowling center. It is one which should never have been opened as a bowling center in the first place.

"It has been a very badly losing operation. It has a lot of competition.

"We believe it was an error to have opened it in the first place. We have made commitments to customers of ours in the area that if and when we repossess the equipment we would close it up, we would not—it would not be resold and operated as a bowling center."

And he said, "Good faith on our part requires us to do just this, and therefore, under no circumstances would we sell to you or to anyone else. We don't think that the place should operate as a bowling center any longer, we don't think it has any future."

Mr. Frecker was not a man with whom one could bargain. He was strong in his opinions and strong in his statements, a man of very strong mind, and who made his point very incisively.

And so I accepted what he said, and reported the tenor of it to the principals, and that was the end of my attempt to acquire Roosevelt Lanes.

Nevertheless, shortly after the first of the year

[1574]

I learned that Brunswick had taken over both Roosevelt Lanes and Americana Lanes from these principals and was operating both of them, and Brunswick did operate Roosevelt Lanes for, I believe, a couple of years after that, and then closed it up and Brunswick still operates Americana Lanes in Queens.

Mr. Hoffmann: Your Honor, if I may have your consent, I'd like to simply read into the record at this time the profit and loss history of Roosevelt Lanes from the exhibit which is in evidence—

The Court: You secured this information from your adversary?

Mr. Hoffmann: From Brunswick.

The Court: Pursuant to discovery.

Mr. Hoffmann: Yes. Exhibit in evidence is Plaintiff's 47.

The Court: Roosevelt is number 265?

Mr. Hoffmann: 265.

The first line, your Honor, is, as you will recall the testimony, the line of the Brunswick operation, and that's all I will bother to read, the top line of the two lines.

The Court: Yes, I know.

Mr. Hoffmann: 1965, $537.

[1575]

Then in 1966, a loss figure of $42,334.
In 1967, a loss figure of $48,315.
In 1968, a loss figure of $36,549.
In 1969, a loss figure of $24,034.
And then beyond that, the exhibit does not speak concerning Roosevelt Lanes.

The witness also mentioned in testimony his attempt to buy Brunswick Royal at West Hempstead, Long Island.

The Court: What number?

Mr. Hoffmann: 311 on this exhibit.

The history in terms of profit and loss of that center is as follows:
1966, a loss of $22,806.
1967, a loss of $5,211.
1968, a loss of $16,902.
1969, a positive figure, the only one here, by the way, $905.
And then in 1970, a loss of $18,470.
In 1971, a loss of $7,973.
In 1972—I'm sorry, 1972, again a positive figure, $8,953.

And in the same exhibit there is a reference to the center, Moffitt, which the witness also testified about—

[1576]

The Court: What number?

Mr. Hoffmann: 217, your Honor. You will find it on the third—no, the fourth page.

The Court: I have it.

[1577]

Mr. Hoffmann: 1965, a loss of $17,135.
1966, a loss of $8,860.
1967, a loss of $60,914.
And then there are no further numbers after that.

Q. And now, Mr. Dankoff, were there any other situations in which you were confronted by Brunswick in an effort to buy or obtain in some way a bowling center?

A. Yes, there was one other attempt made by me as there were by quite a few other bowling proprietors in Long Island to purchase from Brunswick Sunset Lanes in Deer Park, Long Island, after they purchased it from Chris Vitolo who had purchased it in a bankruptcy sale of American International Bowling Corporation.

The Court: What part of Long Island?

The Witness: Deer Park, sir.

The Court: All right.

Q. Yes, sir, can you tell us about that?

A. Yes. I don't remember the name of the representative in the same New Jersey office, I can't be sure whether it was Frecker or the man in charge of the financial arrangements in that office, I no longer remember his name, but I went to see them about the possibility of—to find out whether Sunset Lanes could

[1578]

be purchased, and was advised that it was not for sale.

Some months after—that was, I believe it was in, I believe it was in 1966 when it happened, it may have been in the last part of 1965, I think it was the last part of 1965, and some weeks or months after that on the occasion of Milton Rudo and several other Brunswick representatives

being present at a Greater Pittsburgh Bowling Proprietors Association meeting in Pittsburgh where they spoke to the proprietors at one of their meetings, explaining Brunswick's philosophy in connection with its operating a chain of bowling centers, I specifically asked Mr. Milton Rudo, who was then the head of the bowling center operating division, whether Sunset Lanes could be purchased, and he said, no, none of the former AIBC bowling centers is for sale.

That was because during that talk he stated that all of the BCOD Brunswick—or bowling center operating division houses could be purchased, and when I asked him whether that one could be purchased, he said, "No, none of the former AIBC houses could be purchased."

So I no longer made any further attempt to buy Sunset Lanes.

Q. And Mr. Hanigan had said the same thing,

[1579]

had he not, in San Juan, Puerto Rico, at the meeting of the proprietors association?

A. Yes, sir. And Milton Rudo had told me that personally in January of 1965, too.

Mr. Hoffmann: Here, your Honor, if I may read from the exhibit again, we have a winner, Sunset Lanes.

The Court: You have a winner? Is that what you said?

Mr. Hoffmann: We have a winner here in Sunset Lanes. It is after a first year—-

The Court: You tell me the number.

Mr. Hoffmann: Number 108 on the first page of Exhibit 47.

After the first year, 1965, during which it was acquired and which shows a loss of $17,575, we have for 1966 a positive figure on this lane which was not for sale to Mr. Dankoff of $30,358.

And in 1967 a positive figure of $19,590.

And in 1968 a positive figure of $8,495.

And for 1969 a positive figure of $21,299.

For 1970, $37,737.

And for 1971, $69,822.

And finally, for 1972, a positive figure of $99,008.

[1580]

The Court: Is this the center that Vitolo bought at a bankruptcy sale?

The Witness: Yes, sir.

Q. Now, did you, when I say, "you," I mean the corporation, General Bowling, maintain any center which was in a competitive market with a BCOD or Brunswick Operated Center?

A. The only one that could be said to be in a competitive marketing area was one that we then and still do operate in West Babylon, Long Island, which is several miles distant from Sunset Lanes, the one we were just discussing, in Deer Park, Long Island.

Q. In operation of the center in West Babylon—by the way, what is that center called?

A. Babylon Bowl.

Q. In operation of Babylon Bowl, did you to your knowledge find the center confronted with Brunswick competitive tactics which you as a proprietor were unable to meet?

A. Yes.

• • •

[1583]

The Court: • • •

I hereby direct counsel to rephrase it, eliminating the word, "tactics." The other objection stated is overruled.

Q. Mr. Dankoff, in the operation of your center, did you find yourself confronted by the competitive acts of Brunswick which you yourself were unable to meet in operating your center?

A. Yes, sir.

Q. Tell us about that, please.

A. In 1965, that was about the third or fourth year of constant decline in the bowling business since it first began in 1961——

Q. You mean the decline began in 1961?

A. Decline—in the entire bowling industry, we just could not fill up our lanes, any kind of operators, and in Long Island it was particularly bad.

Everyone was hungry for league contracts. There

[1584]

was then this—this was in the Spring of 1965, there was then bowling in Viking Lanes, a bowling center located almost across the street from Sunset Lanes, six leagues, six large bowling leagues, all emanating from one industrial concern, Airborne Instruments Company.

These six leagues because of their power of negotiating and bargaining together for all of the six leagues then made it known that they were ready to transfer their league contracts for bowling from the 1965-'66 season, which would begin the following September, and began to look around for prices and what they called inducements or extras.

Their negotiating committee of their league officers came to us at Babylon Bowl and wanted to know what our price would be for the 65-66 season per lane or game, as it is known to the—to those not in the trade, and what inducements we would give them over and above price if they would come and bowl.

They were—they would have been very desirable acquisition for any bowling center in those days. They had—I believe they had one league which bowled in the daytime, entirely during dead hours for bowling centers, and another one which bowled at midnight, which is even more dead for bowling centers in those

[1585]

days.

The others bowled in evening hours or what we call prime time, between 6:30 and 11:30 in the evening.

We gave them our prices for the 1965-66 season, we had been charging 55 cents a line in the then existing season, 64-65.

We advised them that our price for the 65-66 season would be 60 cents a line, provided that we could have all six of their leagues, including the daytime one and the midnight one, the most desirable ones, and provided further that the inducements or extras which they were seeking would not be any greater than those which they were then receiving at Viking Lanes.

Those inducements or extras consist generally speaking in the trade of turkeys for the teams as something that they compete among themselves for at Thanksgiving time, bottles of liquor at Christmas time, free drinks at Christmas time, what they call banquets or an end of the season buffet, which is set up for them as an additional reward for their having bowled, and more and more and

more, this will be developed so you will understand what I mean——

[1586]

Mr. Seeley: He drops his voice. I heard "more and more and more."

(Record read.)

A. By the term "inducements or extras——"

The Court: What do you mean?

The Witness: Well, like, they made known to us what they were then getting from Viking, and we gave them the price of 60 cents a line if they would accept the same list of inducements that they were then getting from Viking Lanes.

Q. What was your regular price at that time?

A. Well, at that time the price of 55 cents, but we were contemplating an increase for the following September for the following league year.

Q. To what price?

A. To 60 cents.

They, after a period of negotiation, they told us to prepare the contracts, they said they were satisfied with that arrangement—I want to change that.

I believe we agreed that we would give them the bowling if we had all six leagues, including the daytime and midnight one, for 55 cents a line for all six leagues if the inducements were no greater than they were then getting from Viking, and they, despite the fact that we were contemplating increasing our price the

[1587]

following September to 60 cents, they told us to prepare the contracts, they were satisfied with that arrangement, and we proceeded to prepare the contracts.

Then they came around and said, "Well, we have been talking since we last talked with you to Sunset Lanes, and Brunswick——"

Q. That's the Brunswick?

A. "—and Brunswick is prepared to give us much more in the way of inducements and a better price."

And they told us what they were offered by Brunswick in addition to the 5 cents a lane, the inducements were such that upon analysis in my opinion they amounted to the equivalent of more than 40 per cent of the price they were going to pay for the lines bowling.

Under those circumstances I couldn't meet that competition and I told them, I am sorry to see them go, but I couldn't do it.

They went to several other bowling centers in the area and couldn't get what they wanted, what they said Brunswick offered, and eventually ended up bowling that next season at Brunswick.

The inducements which they got from Brunswick amounted to the equivalent of 21 to 22 cents a line, and this was by admission of Brunswick's own representatives at subsequent meetings where they were confronted with

[1588]

this state of facts by the committee of bowling proprietors of Nassau and Suffolk associations.

Q. When did the first such meetings take place?

A. In the spring of 1965.

Q. Where was it held?

A. It was held some place in Long Island. I wasn't there, but a committee representing me and the rest of us members met with them, and——

Mr. Seeley: May we have the name of at least one?

The Witness: Yes. The Brunswick representatives who were present there were Jack Thomas, Burnie Rudo, those two I remember clearly.

The rest of them at this moment escape me.

Harold Weiner, who was then the manager—the manager—no, I think he was the regional supervisor for Brunswick of that area, which included Sunset Lanes.

And they analyzed what these so-called extras or inducements were and came away from there and reported to us that it was agreed that they amounted to 22 cents—equivalent of 22 cents kickback or refund or inducement or extra per line.

In the meantime I had called Bernie Rudo, who was the director of operations then of all of

[1589]

the BCOD houses, he is a brother of Milton Rudo who was then the head of Brunswick's, head of all bowling operations, and who I knew personally many years.

And I discussed with him the fact did he know that these six leagues were being offered inducements which were the equivalent of 22 cents a line for each line for which they were going to get 40 cents.

And he said he was aware of it, and he said, "We are treating these leagues no better and no worse than we are treating any of the other leagues in our place."

I never got those leagues.

By Mr. Hoffmann:

Q. Do you have any recollection of any other competitive acts which presented the kind of competition you felt you couldn't meet at your center, competitive acts of Brunswick?

A. Well, while their River Bowl, I believe is the name of it, a bowling center which they operate in Maryland, near Bethesda, is not in the competitive market area with two of my bowling centers in Alexandria and Annandale, Virginia, they nevertheless approached two of my assistant managers in one of those bowling centers and attempted

[1590]

to hire them away from our operation at a very much larger scale of pay, and in view of the fact that Brunswick had in discussing its policies with bowling proprietors on many occasions said that they would never take away any of our bowling personnel or management personnel while developing their own personnel, I called the manager of River Bowl and took him to task about the fact that he was trying to hire away two of our assistant managers when we had been assured by the Brunswick representatives that they wouldn't do this.

And he called me back subsequently and apologized and said he would not negotiate with them any further.

But the harm was done. They had been offered much more money, and in order to keep them we had to in the area generally increase the scale which we were forced to pay to our managment personnel.

Well, there were other things done to—in connection by Brunswick in their contacting league secretaries—

Mr. Seeley: I object to the generality of that statement.

The Court: The whole expression will be stricken and the jury will be instructed to ignore it.

Ask the question, Mr. Hoffmann.

[1591]

Q. Mr. Dankoff, can you think of any other specific competitive act engaged in by Brunswick which you felt yourselves you were unable to deal with or meet?

A. Okay. Brunswick in the latter '60's—'66, '67, I believe—came out with a new pinsetter which they called A-2's, and since I never bought them I don't know exactly whether it was a total new pinsetter or a supplement to existing pinsetters, but it was called A-2, to speed up their operation, and Brunswick sent out written communications by someone—by one of their representatives who signed as crusade coordinator, contacting secretaries of leagues in many parts of the country, some secretaries in some of my leagues received some, and in which they suggested to—well, you have the letter there, it speaks for itself.

The substance of it was that they should exert pressure upon the bowlin proprietors where they were bowling to force them to buy A-2's from Brunswick.

Mr. Hoffmann: Would you hold it just a moment?

(Exhibit P-57 marked for identification.)

Mr. Hoffman: I have asked Miss Costello to mark as Plaintiff's 57 for identification a copy of a letter, W. B. Messler, Crusade Coordin-

[1592]

ator, Brunswick Corporation, addressed on stationery of Bowling Division, Brunswick Corporation, to "Dear Mr. Secretary," and two sheets that are attached thereto.

[1593]

Q. Mr. Dankoff, I show you what has been marked as Plaintiff's Exhibit 57 for identification and ask if you can tell us whether that is the communication to which you have just referred in your testimony?

A. Yes, sir. This particular one was not received by one of my league secretaries, but an exact duplicate of it was received by a number of them.

Q. Would you be good enough to look at 57?

A. Yes, sir.

Q. Wait a minute. Before you do that, you are quite clear that this is the same as the ones received by you, and seen by you before, passed on to you by—

A. Not received by me.

Q. Passed on by your league secretaries to you?

A. That's correct.

Mr. Hoffmann: I offer it in evidence, your Honor.

The Court: Any objection?

Mr. Seeley: No.

The Court: P-57.

(Exhibit P-57 received and marked in evidence.)

Q. Now, Mr. Dankoff, I ask you to look at Plaintiff's Exhibit 57 in evidence. Do you notice a date near the top right corner in handwriting?

A. Yes, sir.

[1594]

Q. The date is 3-21-68, is that right?

A. Yes, sir.

Q. Do you have any independent recollection, other than through the use of that date, as to when a letter of this type was received by the league secretaries and handed over to you?

A. To my best recollection, it was in 1966 and/or 1967.

Q. In other words, earlier than that date, earlier than the date that appears—

A. Yes. The date that is written on there is the date that I testified on deposition testimony at the last trial of this action.

Q. I see. Would you be good enough to look at the first page of this exhibit?

A. Yes, sir.

Q. Tell me, sir, did you have an A-2 equipment in your centers in '66 or '67 when you say this communication was received by you?

A. No, sir; I had no Brunswick equipment at all in our centers.

[1595]

Q. Did you have a comparable piece of equipment, made by some other manufacturer, to this fast A-2—to the fast model A-2; did you have a comparable piece of equipment in terms of the speed of the comeback of the ball?

A. No, I don't—we had equipment to set up pins, the same as Brunswick had, only they were made by AMF. But they were not capable of producing the speed of the A-2's, that I know.

Q. Now, this is referred to as a crusade, is it not, "Is your bowling league a 'late late-league?' Do your bowlers threaten to show up in their pajamas, as in the attached ad reprint?"

It never happened to you, did it, that your bowlers threatened to show up in their pajamas?

> "Are you tired of listening to bowlers complain about late starts regardless of what time you bowl?
>
> "Mr. Secretary, if you answer Yes you are qualified to join the Brunswick Bowlers' Crusade to stamp out late starts."

Now, if you look on, what this crusade wants to do is:

"The Crusade to stamp out late starts wants to convert all Brunswick Model A Pinsetters to Brunswick Model A-2's—and thereby, increase

[1596]

the fun and enjoyment of bowling. If you have bowled the A-2 way, you know what we mean. The A-2 is the fastest pinsetter in the West (North, South and East). A-2 can save up to 17 minutes per league night and means on time starts—on-time finishes while providing the best possible bowling.

> "Mr. Secretary, you needn't face another season of aggravated bowlers. Fill out and mail the enclosed application today."

And you notice it says there, "I volunteer! Enlist me in the crusade to stamp out late starts.

"We'll send a supply of the official C. T. S. O. L. S."—I take it, without knowing—perhaps I should ask the witness—that C. T. S. O. L. S. means the Crusade to stamp out late starts—"We'll send a supply of the official badges (like the one attached)"—unfortunately, there is no such badge attached—"so you can crusade where you bowl. Act now. Our supply is limited. And when you receive your supply of badges, instruct your lieutenants to wear them, with honor. Ultimately, every Brunswick-equipped center should have A-2's . . . why not be a leader?"

Now, who is the address of this, Mr. Dankoff?

[1597]

A. League secretaries.

Q. These are secretaries of leagues which can make contracts with bowling centers, and choose them as they please, is that right?

A. In most instances, not in every instance. Some leagues require a president to negotiate with the secretary. But, generally speaking, league secretaries are the most powerful representative for their leagues and make contracts for them.

• • •

[1600]

By Mr. Hoffmann:

Q. We were, I think, on the pajama page just before the recess.

Now, Mr. Dankoff, have you had occasion to see any BCOD operated centers while they were in the hands of BCOD management?

A. Yes, I have seen quite a few of them since 1965.

[1601]

Q. And tell me about this one observation, if you can; in the centers you have seen were you able to make a judgment, from what you saw, as to whether or not the pinsetting equipment was repossessed—their equipment?

A. No, I would have no way of judging that. The pinsetters themselves are not available to public view. So I would have no way of judging. But I know that some of them were repossessed bowling centers that I was in, of course.

Q. And as to those repossessed centers, did you notice any modern Brunswick equipment?

A. Yes, pretty generally, when Brunswick took them over, shortly thereafter they began programs of modernization, or dressing them up with most modern equipment, that the public would see.

Q. Did you see any A-2 machines in these centers?

A. Yes, sir; they usually labelled those by having the letters "A-2" on some of the equipment.

Q. Do you have any idea of when the A-2 machine was first generally offered to the trade, to the bowling proprietors?

A. I would have to guess. I couldn't be precise. It was in the middle '60's, but I don't remember the exact year, because I didn't purchase them.

[1602]

Q. You spoke before of the problem of holding on to your managerial employees. I address your attention, if I may, to Plaintiff's Exhibit 28 in evidence. Would you be good enough to look at page 15? You notice the second paragraph from the bottom on page 15, "It is also BCO policy not to hire management personnel away from other bowling centers but to recruit and train new people."

Does that jibe with your experience, sir?

A. Exactly contrary to my experience, as I previously testified.

[1603]

Q. Now, Mr. Dankoff, your centers use AMF equipment; is that your testimony?

A. It is not exactly true. The first bowling chain that I operated, Bowling Corporation of America, we did have out of the 16, I believe we had three or four bowling centers that had Brunswick equipment, but the present chain, General Bowling Corporation, has only AMF-manufactured equipment.

Mr. Hoffmann: Excuse me, your Honor, just one second.

The Witness: I would also have to quarrel with that last statement, Mr. Hoffmann, in this respect: Even though the bowling equipment in the present chain is all manufactured by AMF, we do have bil-

liard tables in many of them which were manufactured by Brunswick, and which we purchased from Brunswick.

Q. Do you have any knowledge of AMF repossessing its bowling equipment such as pinsetters?

• • •

[1611]

Q. You testified, Mr. Dankoff, before the weekend recess, concerning competitive acts of Brunswick that your center experienced?

A. Yes.

Q. Are there any others which you know of which failed to testify to this far?

A. Well, one which I found particularly effective competition against existing bowling proprietors was Brunswick's habit after repossession and taking over a bowling center and putting it in its bowling operating division, of going through what they would call a modernization program.

• • •

[1615]

Q. Mr. Dankoff, can you think of any other examples of competitive conduct by Brunswick which you, as a proprietor of bowling centers, were unable to meet?

A. We were unable to meet the kind of inducements and "giveaways" which I already attested to the last time. And from my own personal experience we were unable to meet the very low prices and rewards offered to people

[1616]

who would come in and bowl in those bowling centers.

The Court: Did you say "prices" or "prizes"?

The Witness: Prices.

The Court: Prices.

The Witness: As well as prizes, your Honor. Both were offered.

• • •

[1629]

Q. Mr. Dankoff, did you attend a meeting of the Bowling Proprietors Association of America taking place in San Juan in June 1965?

A. Yes.

Q. Now, sir, please listen to my question carefully: Without making any reference to the words used, but simply giving us as a lawyer might, simply the sense of it, was there any resolution introduced at that meeting concerning the Brunswick—the matter of Brunswick operating bowling centers?

A. Yes.

Q. Were you the author of that resolution?

A. Yes.

Q. And please most carefully be mindful of the wording in my question.

What was the sense of the resolution?

A. The resolution—the sense of it expressed the grave concern of all of us as bowling proprietors about a manufacturer-creditor of the bowling industry going into the business of operating bowling centers in competition with us.

Q. Was that resolution passed at this meeting?

[1630]

A. Unanimously.

Q. About how many people were there, would you say?

A. Over 400 members.

Q. Was there any other meeting that you attended of bowling proprietors' associations during that year 1965?

A. Yes, many.

Q. Can you tell us whether or not the subject matter you have described as being part of the resolution in San Juan was considered by other bowling proprietor associations in meetings taking place in 1965?

A. Yes, sir.

Q. What associations?

A. The Nassau County Bowling Proprietors Association, of which I was a member; and the Suffolk County Bowling Proprietors, of which I was a member.

Q. Were there any resolutions of similar import offered at meetings of those associations?

A. Yes, virtually the same import as I described for the San Juan one, and they were adopted by both associations.

Q. Now, then, in 1966 do you recall that you attended any meetings of bowling proprietors' associations at which the same or similar matters were discussed?

[1631]

A. Yes, in those years they were discussed at every bowling proprietors association meeting that I attended anywhere, whether it was Pittsburgh or Washington or——

Q. Did you attend meetings in 1966?

A. Yes.

Q. Where were they?

A. I attended meetings in Virginia and in Washington and in Pittsburgh and in Long Island, and in the 1966 meeting of members of the Bowling Proprietors Association which took place in June of 1966 in San Diego, California, prior to that there was a Board of Directors meeting of the Bowling Proprietors Association of America which

took place in January of 1966 at the Jack Tar Hotel in Lansing, Michigan, where the same matter was discussed in great detail and resolutions offered.

Q. Do you have any recollection of about how many bowling centers had been acquired by BCOD at the time of the Lansing meeting in January 1966?

A. Yes. They were up over 60 at that time.

Mr. Hoffmann: Your Honor, I don't have——

The Court: What are you looking for?

Mr. Hoffmann: I have something, your Honor, which has not yet been offered—it's been previously marked—I'd like to have it marked for the purpose of jogging the witness' recollec-

[1632]

tion as to the Lansing meeting. I would certainly want to show it to you.

The Court: Maybe he doesn't need jogging.

Q. Mr. Dankoff, are you quite confident about the number of centers acquired as of January 1966?

A. Well, I gave my best recollection.

Q. Do you have a real recollection of what it was as of that moment in history?

Mr. Seeley: I will stipulate, counsel, it was 124 at the year ended 1965.

Mr. Hoffmann: Well, your Honor, I trust the proffer of the stipulation will make this document relevant.

May I have this marked, please?

(Exhibit P-58 marked for identification.)

The Court: What is it, resolution passed in Lansing, Michigan?

Mr. Hoffmann: Well, it is a report of a meeting which has been described already by the witness, but I think I should ask him a few more questions before offering the document.

The Court: You intend to offer this into evidence?

Mr. Hoffmann: Yes, if I properly identify it, your Honor.

[1633]

Q. Mr. Dankoff, I show you what's been marked as Plaintiff's 58 for identification.

A. Yes.

Q. I ask you if you have seen this or its counterpart before?

A. Yes, I produced it at an earlier date from my records.

Q. What is it, sir?

A. It is my minutes of a meeting of the chain organizations which was held in Lansing, Michigan, in January 1966. I was chairman of that committee and I took my own notes and I drew my own minutes of what occurred at that meeting.

That was a committee of the Bowling Proprietors Association of America.

Mr. Hoffmann: Your Honor, I now offer P-58 into evidence.

Mr. Seeley: I have not seen it, your Honor.

The Court: You will before I rule on it.
Show it to Mr. Seeley.

Mr. Hoffmann: Certainly.

Mr. Seeley: I object to it, your Honor.

In the first place, there is a statement in here about the number of centers operated by Brunswick. It doesn't emanate from Brunswick.

[1634]

Obviously, it is hearsay.

It doesn't say who says that was the number.

The Court: Didn't you stipulate——

Mr. Seeley: I stipulated 124 at the year ending 1965. That's domestic, excluding other countries.

The Court: Did I understand you to say that you prepared these minutes?

The Witness: Yes, I did, sir.

The Court: Cross-examine him as to the authenticity of same with regard to his knowledge with particular reference, but not limited, to the 200 bowling centers or anything else you want to interrogate him on as far as that paper is concerned.

Mr. Seeley: I only want to question him about that particular——

The Court: Proceed.

EXAMINATION ON VOIR DIRE

By Mr. Seeley:

Q. What was the source, Mr. Dankoff, of the statement which you recorded in your minutes about Brunswick's operating approximately 200 bowling centers ?

A. May I see it, please?

The source was the conversation which took place

[1635]

in the chain committee meeting, Mr. Seeley.

Mr. Seeley: Then I object to it as hearsay, and I further object to the entire document, your Honor, as being conclusory, as being clearly hearsay, a report of what some people said who were gathered together apparently without anyone from Brunswick being in attendance.

And on the standing grounds that this line of inquiry is irrelevant anyway.

Mr. Hoffmann: If your Honor please, as to the 200 centers, I am content to have the document admitted in evidence with the qualification that it is not being offered for the proof of the matter asserted that there were 200 centers existing as of January 1966.

In all other respects I submit the report is perfectly competent, it is a report of what happened at a meeting which took place in Lansing, Michigan, at that time, and its general relevancy to the issues here, the same relevancy about which we debated at the side bar.

The Court: Supposing we change that bowling center number to 124; any objection to that?

Mr. Hoffmann: I won't stipulate to that.

[1636]

I think it was larged than that.

Mr. Seeley: Plaintiff has an exhibit which shows——

The Court: P-59.

Mr. McNeill: 49, if your Honor please.

Mr. Hoffmann: Your Honor, I will be prepared to stipulate it, but in doing so what I am trying to say is when you have a number given on P-49,

or indeed on the one on Exhibit, I think it is, 15, those numbers are at a particular point in the year, at the end of the fiscal year, particularly in 1965, 1966, where a great number of centers were being acquired, it didn't speak to the number of centers acquired during the year. It simply spoke to the number which BCOD had as of that one day, at the time the books were closed at the end of the fiscal year.

The Court: Unless you agree that the bowling center number will be 124, I will not permit it into evidence because on cross-examination Mr. Dankoff admits that this was general conversation, actually it is hearsay, he heard it from some other members who were present, that they were operating with what, approximately 200 centers, somebody

[1637]

said that, or the substance of it?

The Witness: Yes.

Mr. Hoffmann: I will stipulate, your Honor.

The Court: 124 centers. Into evidence.

Mr. Hoffmann: As of that point in time.

The Court: Right. Over the objection of counsel for the defendant, P-58 into evidence.

(Exhibit P-58 received and marked in evidence.)

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

[1638]

The Court: When was that meeting, again?

The Witness: January 27, 1966, you Honor.

The Court: Lansing, Michigan, right?

The Witness: Yes, sir.

By Mr. Hoffmann:

Q. Do you have a copy of it in front of you, that P-58 in evidence?

A. I do.

Q. The discussion referred to in the third paragraph, where it says, "There was a long discussion about Brunswick's activities in its BCO division, in the extent of the competition of its approximately 200 bowling centers now in operation," did that discussion lead to any action or resolutions by this group?

A. I would say it led to the offering of a resolution a couple of days later at a regular board of directors meeting. But the resolution was offered by me and not by this group.

Q. And what was the burden or the meaning of that resolution that you offered? Again, please be mindful of the limitations I asked you to follow in my previous question relating to San Juan.

A. It alluded to the same matter of concern as the

[1639]

previous resolutions described here, with this difference. It asked that the officers and executive committee of the Bowling Proprietors Association be required to retain the best legal counsel available, expert in the appropriate field, to study the matter of the background, history and growth of Brunswick in the field of operating its own bowling centers, and its effect, competitively, upon the members of the association, and to advise the members accordingly.

That was the gist of it.

Q. Do you know of any other means where the subject of that resolution, or the subject of Brunswick's activities in its BCOD Division, in the extent of the competition of its bowling centers with the members of the association, was considered?

A. Yes, sir; a very important meeting where that was considered a matter of prime discussion was at the general membership and convention of the Bowling Proprietors Association of America.

Q. When did that take place?

A. In June of 1966 in San Diego, California.

Q. And was there any activity taken by the membership at that meeting in respect of this subject—in relation to the subject?

A. The membership took under consideration a resolu-

[1640]

tion which was offered—I believe by Mr. Lieblich—at that general membership meeting. But it did not pass, it failed by a few votes.

Q. And have you been in attendance at meetings of these associations you have described yourself as having membership in, since that time, that is to say, since the time of the San Diego meeting in '66, have you been in attendance at such meetings?

A. Yes, I have been in attendance at every directors' meeting and every general membership meeting since that time, up until the present time.

• • •

[1642]

Q. Was there any resolution or action taken at any of these later meetings in respect of that subject matter?

A. No, sir; there were no further resolutions that I recall at these meetings.

• • •

[1672]

CROSS-EXAMINATION.

By Mr. Seeley: ° ° °

Q. Sunset Lanes was one of the former AIBC chain centers, was it not?

A. Yes, sir.

Q. Were you present at the bankruptcy sale when all of the AIBC centers were sold at auction?

A. No, sir.

Q. Was there anyone present representing you?

A. No, sir.

Q. Did you make any effort to purchase that center from Mr. Vitolo after he became the successful bidder for it?

A. No, sir; my efforts to obtain it were from Brunswick after they forced him to turn it over to them.

Q. Do you know whether or not it is a fact that at the time of the bankruptcy sale the contract delinquencies of Sunset Lanes were in excess of $230,000?

A. Your question is: Do I know it?

Q. Do you know?

A. Now? That wouldn't surprise me. I just can't say that I remember it, but it wouldn't surprise me if that were correct.

Q. Was it Milton Rudo to whom you made an

[1673]

inquiry about whether Brunswick would sell Sunset Lanes to you?

A. One of several inquiries was directed to Milton Rudo.

Q. Again, when was that?

A. That was September 2, 1965, in Pittsburgh. Milton Rudo was present with Bernie Rudo, Dick Sharp, Jack Thomas, Dan Scott, all Brunswick representatives, and the Brunswick attorney, Mr. Wehrenberg.

Q. Did any of those gentlemen tell you that in the bankruptcy proceeding—the AIBC bankruptcy proceeding —an appeal had been taken from the sale and that that appeal had not yet been decided?

A. I never heard that mentioned by any Brunswick representative until after this action had been begun.

Q. Did you ever hear it from any other source before this action?

A. No, sir.

Q. Would you have purchased Sunset Lanes from Brunswick if it had not been able to warrant that it had a clear title to the center?

A. I would put it this way, Mr. Seeley. I would have purchased it if the terms were satisfactory, mutually satisfactory, subject to taking over Brunswick's position, and payment after Brunswick was able to produce

[1674]

good title. No lawyer would take any purchase otherwise.

Q. I wouldn't think so.

Were you present in the audience and listening when Mr. Hanigan, president of Brunswick, made his talk to the BPAA convention in San Juan in 1965?

A. Yes, sir. It was in response to that very speech—

Q. Is the answer yes?

A. —that I spoke. The answer is yes. I apologize.

Q. Thank you.

Have you ever, subsequently to that time, read the text of his statement as it was printed in the BPAA magazine?

A. Yes, I read it as it was printed in the BPAA magazine. I listened to it and took notes, copious notes, at the time that he was making the statements. And I read other reproductions of those 14—famed 14 points in other bowling publications, and publications that Brunswick put out.

[1675]

Q. And did you hear Mr. Hanigan make a statement during those remarks to the convention that the BCOD centers would be for sale?

A. I heard it. It wasn't true, but I heard it.

Mr. Seeley: I move to strike all except "I heard it."

The Court: So ordered.

Q. Did you hear him make that statement in these words:

"The best solution that we can see for you and for us is to operate until these houses are profitable, and then sell them on a multiple of earnings basis"?

A. I heard Mr. Hanigan make that statement, yes.

Q. Did he in the course of that address make any other statement about Brunswick selling BCO centers?

A. Yes, the substance of his statements, as those of all Brunswick representatives there at that time, was that these were just being repossessed as salvage operations, and they would all be for sale, and hopefully they would sell them to us.

Q. Did you hear Mr. Hanigan make any other statement as to when and under what circumstances they

would be for sale, other than the one I have just read to you?

A. No, he gave no details, neither was anybody else

[1676]

willing to give any details of——

Mr. Seeley: I move that everything except the "no" be stricken.

The Court: So ordered.
Don't volunteer any information, please.
Just answer the question.

The Witness: Yes, sir.

Q. Was it in March 1965 that Brunswick took over Sunset and began to operate it?

My best recollection is that the bankruptcy sale was in March 1965.

A. Well, Mr. Vitolo bought it at the bankruptcy sale, and if that was in March 1965, within a very short few days after that Mr. Vitolo sold it back to Brunswick or sold it to Brunswick.

Q. Is there such a thing in the bowling industry as a bowling season referred to by people in the industry?

A. Yes, it is a seasonal industry.

Q. Would you explain to the jury what that is?

A. It does better in the times of the year when the weather is not good.

In the summertime it is worse, in the fall, winter and spring it is better.

The worse the weather, the better the business.

[1677]

Q. Does almost all of the organized league bowling take place during the winter?

A. Usually from Labor Day until about Decoration Day, Memorial Day.

Q. And at the time of your conversation with Milton Rudo and others about your desire to buy Sunset Lanes, had Brunswick been operating it through a full bowling year?

A. No, sir.

Q. Have you ever attempted to purchase a BCO center from Brunswick after Brunswick had operated it for a full bowling year?

A. No, sir. After June 1965 I made no further attempts to buy anything that Brunswick was interested in.

• • •

[1682]

Q. How many bowlers, approximately, belonged to the six Airborne Instruments league about which you testified?

A. You are using the present tense. Do you mean did?

Q. Belonged, no, at the time you were testifying about their negotiations with Babylon Bowl and Sunset Lanes.

A. My best recollection after all these years is that it would be several hundred, four to five hundred individual bowlers in the six leagues.

Q. And that, of course, would be an exceedingly desirable piece of business to a bowling proprietor who was hungry for league business, would it not?

A. Yes, it was very appetizing business for all of us.

Q. And I understand that at the time that Babylon Bowl was approached by Airborne Instruments leagues with respect to arrangements for the 1965-1966 season,

that you had reached a decision as to what your league price per lane would be for that season; is that right?

A. Yes.

[1683]

Q. And that price was 60 cents?

A. Yes.

Q. Had you reached any decision or policy as to what inducements you would offer to leagues for the 1965-66 season?

A. I had as to what inducements I would offer these six Airborne Instruments leagues, if you mean all of the rest of the leagues in our house, yes.

Q. Yes.

A. It was different for those leagues.

Q. Then tell me as to the other leagues, what decision had you reached as to the inducements you were going to offer for the '65-'66 season?

A. They were going to be exactly the same as the preceding year, and the year before that, and the year before that.

That would be, if you'd like the details of it, I will give them to you.

Q. I would. I was just going to ask.

A. That would be trophies for the league, trophies for the best scores in the league, trophies for the best team in the league, and in some instances first, second and third place trophies.

I have to use it generally because it was not absolutely frozen into exactly the same with respect to

[1684]

every single league; sometimes they were more, depending on the sizes of the league and also depending upon

whether there were four persons bowling on the team in the league or five persons or three persons.

Q. All right.

A. And there was a—we would give them a drink of their choice at Christmastime, every member of the league, whether it was a drink of alcoholic beverage nature or otherwise, whichever they wanted.

That was the arrangement as of that time for our leagues in our house, regular leagues in our house.

Q. No turkeys?

A. No, no turkeys and no bottles for our leagues as of that time.

Q. Addressing myself now not to Babylon Bowl particularly but just to Long Island bowling centers in general, you were telling the jury what inducements are, and you mentioned that turkeys at Thanksgiving and bottles of liquor at Christmas and a banquet at the end of the season, and then you said "more and more and more."

Would you amplify your answer now and tell us what "more and more and more" included?

A. Well, I was talking about Brunswick's inducement at the time, and "more and more and more" indicated, for example, a card which would entitled every league bowler

[1685]

bowling in a Brunswick house to have 20 free games of bowling during the following summer at Brunswick's expense; free game passes as rewards for the type of bowling they might be doing while bowling in the leagues; and another inducement was that they would be able to participate through the bowling in the Brunswick houses in roll-offs, which if they were successful they would then go to Washington at Brunswick's expense and bowl there for further roll-offs, winners to be sent upon a European trip by Brunswick at Brunswick's expense.

Q. All right, now—

A. There are still more, if you want—

Q. I don't want to interrupt you. You go right ahead. I thought you paused because you had finished.

A. No. I will give you more that they (Sunset) offered.

Trophies were given much more generously than we were offering; there was what we in the trade refer to as banquet, but it is really a buffet, for the bowlers at the bowling center's expense, at the end of the season, that was offered by Brunswick; in addition to the lower price that I have already testified to, was offered at 50 cents a game compared to 60.

And the Christmas drink, I didn't mention that. Brunswick included that in the "more and more and more."

[1686]

Q. As a matter of fact, when you made that statement ending with the words "more and more and more," were you not testifying as to the inducements which these leagues had received from Viking Lanes?

A. No, I testified on several occasions that Viking Lanes was giving more in the way of inducements than Babylon Bowl was giving its league, but substantially less than Sunset offered them to come away from Viking and bowl at Sunset.

Q. And when you said these inducements or extras consist generally in the trade of turkeys and so forth, you say what you really meant was just Sunset Lanes?

A. No, I'm talking about generally in the trade they—that is used as an inducement, yes, where competition requires it, it is used as an inducement, but the amount of the inducement is the thing that I made reference to.

Q. Right. Now, generally in the trade what inducements are there that you know of other than trophies,

turkeys at Thanksgiving, liquor at Christmas, buffet at the end of the season?

A. You'd like me to name additional ones? Yes, I know of many more that are used as inducements by some people in the trade.

Some use bowling balls given as gifts to the

[1687]

leagues to shoot for and roll for; some give cash prizes for the leagues to compete for; some even give cash inducements back to the league to add to its prize fund, this has been known also.

It takes so many different forms, I have known some bowling proprietors who took some of their league officers on trips to theaters, parties, and things of that sort.

* * *

[1697]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Dankoff, earlier today you said that—you were looking for some pieces of paper which were in your papers on your lap, which were related to a question I asked you about comparative—competitive methods; did you find them?

A. Yes, sir; this is one published by Brunswick relating to 1965.

Mr. Hoffmann: Let me have it marked first, if I may.

I am sorry, Mr. Seeley, I only have the one copy.

Mr. Seeley: May I look over your shoulder?

Mr. Hoffmann: Would you please mark it as plaintiffs' Exhibit 59 for identification a document entitled, 1965 BCOD summer bowling

[1698]

festival.

(P-59 marked for identification.)

Mr. Hoffmann: I hope your Honor will bear with me, I only have this one copy.

Q. Mr. Dankoff, I show you what has been marked as Plaintiff's Exhibit 59 for identification, and ask if you can tell us what it is?

A. It is a photocopy of a publication put out by Brunswick offering junior bowling—bowling to children—three games, shoes, hot dog, coca-cola, for a dollar.

And this related to the summer, but I also do have personal knowledge of the fact that the same offer was made in the winter, junior leagues, as well.

Q. Confining yourself to just the document, you say this was a publication put out by Brunswick; do you know that to be so?

A. I know that to be so.

Mr. Hoffmann: I offer it in evidence, your Honor.

The Court: Any objection?

Mr. Seeley: One question, your Honor.
Do you know the year in which this—it says 1965.

The Witness: It bears 1965.

Mr. Seeley: No objection.

[1699]

The Court: Into evidence.

(Exhibit P-59 received in evidence.)

By Mr. Hoffmann:

Q. Mr. Dankoff, plaintiff's 59 in evidence says:

"Three games, shoes, hot dog, coke, a dollar. Good every Saturday, May and June 1965. Good every Monday and Friday July and August 1965. No limit to number of these tickets you can buy or use on Junior Friendship Day."

Do you know about how much it cost your centers in 1965 to supply shoes to a bowler?

A. How much it cost us to supply shoes?

Q. Let me put it this way.

Did you rent shoes in that period?

A. Yes.

Q. What was the rental charge for shoes?

A. 15 cents for juniors and 20 cents for adults.

[1700]

Q. And how about a Coke, do you have any recollection of what you charged for a Coke in your center in 1965?

A. A small Coke was 10 cents and large Coke was 20 cents.

Q. Now, three games. How much did a game go for in 1965; what did you charge for a game at your center?

A. For junior bowling, 45 cents. And for adult bowling, 55 cents and then it went to 60 cents.

Q. Can you total up for us what the value of those concessions would be if given out by your centers in 1965?

A. Somewhere between $1 and $1.90 at our prices in our bowling centers for the total package.

Q. Now, did you ever give to bowlers concessions as costly as that?

A. Well, that's a pretty general question.

At that time our actual average cost the year round for each line of bowling, our cost was in excess of 40 cents a line.

Q. How much did you charge again per line at that time?

A. 45 cents a line junior, 55 adults and 60 cents, it went up in September, but every line then cost us in

[1701]

excess of 40 cents a line without the cost of the shoes, without the cost of the Coca-Cola or the hot dogs.

Q. In point of fact, these items, the shoes, the hot dogs and the Coke, were regarded, were they not, in your usual practice as additional income which would come above money paid for the permission to roll a game; isn't that right?

A. Yes. Every bowling center necessarily a combination of several businesses. It is a bowling business, it is a restaurant business, there is for adults a bar and lounge business usually, except in such states as prohibit them.

And there is also the business of selling bowling accessories.

All of those are essential elements going into the operation of the total bowling center.

Q. Now, sir, you stated in answer to a question of Mr. Seeley what you thought the cost to Brunswick was of the Bowl-Your-Way-to-Europe program.

What was that estimate?

A. In my opinion it was 50 cents a bowler participant, meaning a league bowler, in the entire Brunswick operated chain per season.

Q. I thought you had said, in listening to your answer to a question of Mr. Seeley's, that it was 50 cents

[1702]

a line, but probably I was mistaken.

A. If I said that, then I misspoke. That would be impossible because that's all they were getting was 50

cents a line for bowling. I meant 50 cents per bowler per season.

Q. And was it this 50 cents a bowler to which you referred when you say you confronted Brunswick representatives?

A. That's right.

Q. And which they admitted inferentially was so; isn't that testimony?

A. That's right.

Q. Now, have you learned from your experience that when the Brunswick officials said they were repossessing equipment in centers in financial trouble, and would sell off the centers to independent proprietors, have you learned whether or not that happened in fact; do you know whether Brunswick ever did that?

A. I know that they at the time of the last trial, they asserted they had sold two out of the total of almost 180 bowling centers that they repossessed and operated.

Q. They sold off two?

A. Yes.

Q. Do you know of any others they may have sold

[1703]

off?

A. I have heard of none since that time, of the BCOD operated centers.

Q. You yourself tried to buy some, did you not?

A. I so testified.

Q. That's what you testified about before both in answer to my questions and Mr. Seeley's?

A. Yes.

Q. Now, there has been some talk, mostly found in the form of questions put to you, concerning repossession of equipment. Mr. Dankoff, do you distinguish between

repossessing a pinsetter or a lane, and repossessing a bowling center; is there a difference?

A. Yes, material difference.

Q. Will you explain the difference for us?

A. Well, if there is repossession of the equipment then the conditional vendor, in these cases the bowling manufacturer, would take possession of the equipment and move it out of the bowling center.

Q. By "equipment" you mean pinsetters, the lanes, things of that sort, that are movable?

A. The settees, I'm talking about all personal property, the lanes even are considerable movable personal property. Masking units, pinsetters, settees, the ball racks upon which balls are set forth, and

[1704]

generally it includes everything because the security paper is all-inclusive, everything that was sold by the vendors is included.

Everything on repossession, if it is a true repossession, then they actually take it out of the possession of the vendee and remove it and dispose of it as the vendor desires.

Q. A bowling center is something more than just lanes and pinsetters, is it not?

A. Yes.

Q. Would you tell us what the difference is between repossessing machines and lanes, and taking possession of a bowling center?

A. Well, if a repossessor also technically repossesses that remains in possession in the bowling center, and operates it, then that repossessor then comes into possession of additional assets that were formerly part of the bowling center and not part of the bowling sale.

For example, in most instances where there is any alcoholic beverage sold, whether it is beer or hard liquor or both, there is a liquor license involved. There is leased premises involved, there is the landlord to be paid.

Q. When you say "leased premises," you mean someone else in most instances owns the real estate;

[1705]

is that what you're saying?

A. In most instances. As a matter of fact, even in the rare instances where a bowling operator is also the owner of the real estate, it was generally held by another corporation other than the one which purchased the bowling equipment.

But in most instances the owner of the real estate was not the operator.

[1706]

Q. So that if Brunswick acquires a bowling center which has been in default on its debts, it is acquiring interests which include the following:

The lease, if a lease exists, is that right; the right to use a piece of real estate if it is not on lease in some other way; is that right?

A. Well, it is questionable whether they could acquire the exact lease. They'd have to make some new arrangement with the lessor to permit them to stay in and operate.

Q. But they take over if they are going to operate some kind of right to use the premises?

A. I would know of no other way they could remain in possession.

Q. Are there other things as well which go into a bowling center which would pass along to Brunswick in the instance where it acquires a bowling center?

A. Well, there would be—there could very well be carpeting that was purchased which is—these days—in those days an essential part of every bowling center, a lot of it. There would be tables, chairs, lounge furniture, in many cases quite elaborate.

Q. Would you agree that good will would also be something acquired?

A. Yes, if one is able to take it over as a going

[1707]

operation, it is much more valuable than if one were to pull out all of the equipment and wait until new equipment is installed.

Q. Anything else you can think of?

A. I think we have pretty well exhausted it.

Q. Would leagues be included, too?

A. That's what you meant by "good will", I assumed, the disposition of the bowlers and the league bowlers and the open bowlers to come to this particular place and affiliate themselves with it as their bowling home.

Q. All of this is vastly more, is it not, than just picking up some pinsetting machines and taking them back and putting them into a warehouse or using them some place else?

A. Entirely different operation, entirely different ballgame.

Q. If I understood you on cross-examination, you said that Viking lost leagues to Sunset; is that right?

A. Well, the Airborne Instrument Leagues came from Viking, that went to Sunset that we competed for.

Q. Do you know what happened to Viking after those leagues were lost?

A. Yes. Within about a year they were forced to

[1708]

close. They failed and closed up.

Q. Now, Mr. Hanigan asked you a question——

The Court: Who?

Mr. Hoffmann: I'm sorry. Mr. Seeley.
My apologies.

The Court: I thought there was a new lawyer here.

Mr. Hoffmann: No, your Honor, my mind sometimes jumps ahead as well as backwards.

Q. Mr. Seeley asked you a question having to do with the appeal from the AIBC sale, and you testified about that, did you not?

A. I testified that I never heard about it until after this litigation began.

Q. What you heard you heard from other sources; is that your testimony?

A. I heard from Brunswick witnesses.

Q. And do you know of your own knowledge whether or not such an appeal was ever taken or filed?

A. I have absolutely no knowledge about it. Mr. Hoffmann, you asked me about the other papers that I found during the recess——

Q. Thank you so much, Mr. Dankoff.

You testified before about Plaintiff's 59 now in evidence as the paper which you found among

[1709]

your papers during the recess; is that right?

A. Yes, sir.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as Plaintiff's Exhibit 60 for identification a two-page——

The Witness: I stapled them. There are two separate ones.

Mr. Hoffmann: I will unstaple them.

Single page entitled, "Your Summer Bowling Festival of Fun, Brunswick Circle Lanes."

(Exhibit P-60 marked for identification.)

Mr. Hoffmann: Once again, your Honor, I'm sorry, we just have a single copy.

Q. Mr. Dankoff, I am going to show you plaintiff's 60 for identification and ask you if you can tell us what it is.

A. This is a flyer, photocopy of a flyer published by Brunswick with relation to one of their BCO operated houses called Brunswick Circle Lanes in which they offer the summer bowling programs which included free open play coupon books.

Q. Before you go on, excuse me.

A. You're right.

Mr. Hoffmann: I offer it in evidence.

Mr. Seeley: No objection.

[1710]

The Court: Into evidence.

(Exhibit P-60 received and marked in evidence.)

Q. Now, then, Mr. Dankoff, what does 60 show?

A. Free open play coupon books each worth $5 for each of our 1964-1965 winter league bowlers, free open play coupon books each worth $5 for each bowler bowling in one of the 1965 summer leagues, every Saturday, May and June, and every Monday and Friday during July and August, for junior bowling, 3 games, hot dogs, shoes and

Coke for $1, and practicing time on Friday mornings or afternoons, bowling as many games as they might wish—this applied to adults—for the total price of $3—of $1 for three games, and free instructions in addition.

Those are the principal items.

Q. Could you afford instructions at your bowling centers at this time, 1965?

A. Not for open bowlers, but as part of league bowling we gave instruction to league bowlers only.

Q. But this applies to open bowlers, does it not?

A. It would indicate that because there is no specification of any particular type that it supplies to.

Q. Now, could you give us any kind of—let me

[1711]

withdraw that.

Do you know from your experience about how much it costs to give instruction to a bowler?

A. I don't think one can ascribe an exact amount per game, but generally we'd just use one of our regular personnel for that. In season when we have a larger number of leagues we hire somebody to devote him or herself to instruction entirely.

Q. So some of these items we didn't even need your opinion on because the exhibit states what the items are worth, and if I may, your Honor, I think I had better show it to you——

The Court: It is in evidence anyway, is it not?

Mr. Hoffmann: Yes. I just thought you wanted to see it.

I'd just like to read into evidence the particular lines in which there is a price attached to the items.

The Witness: I already did that. I read it a few moments ago.

Mr. Hoffmann: Free open play coupon books each worth $5 for each of our 1964-1965 winter league bowlers.

Free open play coupon books each worth $5

[1712]

for each bowler enjoying one of our 1965 summer leagues.

Every Saturday during May and June, and Monday and Friday during July and August, will be Junior Friendship Days. Three games, hot dogs, Coke and shoes, $1.

Adult daze, May through September, Fridays 9:30 to 11 or 1 to 3, bowl as many games as you wish for the total price of three games for $1, minimum three per lane, free instructions available.

Can you tell us from your experience, Mr. Dankoff, what is the maximum that any one bowler that you know of ever came in as an open bowler to your bowl and bowled?

A. Maximum number of games?

Q. Yes.

A. That would be—that could go anywhere from one game to—I have seen as many as 50, one man bowled 50 games.

Q. One man bowled 50 games in one day?

A. In one 24-hour period.

[1713]

Q. He would get a good deal with this, would he not?

A. Well, I don't know about that. That was limited to the hours of Friday morning and Friday afternoon.

The Court: He must have been on three shifts, wasn't he?

The Witness: Some of them will start bowling some afternoon and bowl to the next morning, sir.

The Court: With or without a turkey.

The Witness: That's right. If they get three strikes in a row, that is called a turkey.

Mr. Hoffmann: Miss Costello, will you be kind enough to mark as P-61 for identification a document entitled "Brunswick, The First Name in Bowling, is remodeling, is modernizing," and so forth.

(Marked Exhibit P-61 for identification.)

Mr. Hoffmann: Your Honor, again I apologize. I have only one copy, which I am showing to Mr. Seeley.

(Shown to counsel and the Court.)

By Mr. Hoffmann:

Q. Mr. Dankoff, I show you P-61 for identification, and ask if you can tell us what it is.

A. It is a photo copy of a flyer published by Bruns-

[1714]

wick indicating that they are remodeling and modernizing the equipment in one of the bowling centers that they repossessed in California. And it states that they will operate Brunswick Bolero Lanes, having the ultimate in service, the finest lane conditions, and the friendliest atmosphere. Brunswick Bolero Lanes it was to be called upon completion of modernization.

Mr. Hoffmann: I offer P-61 into evidence.

Mr. Seeley: No objection.

The Court: I didn't find out where it was. Where is Lemon Grove?

Mr. Hoffmann: He said California.

The Court: Into evidence.

(Exhibit P-61 received and marked in evidence.)

By Mr. Hoffmann:

Q. I note at the top of the exhibit, "Brunswick, The First Name in Bowling, is remodeling, is modernizing equipment and will operate Brunswick Bolero Lanes, 7065 Broadway, Lemon Grove."

Do you share this designation, do you agree that Brunswick is the first name in bowling?

A. Well, they were in the bowling business first, before AMF was, but—I think between the two of them, that each would dispute the other's claim to the same effect.

[1715]

The Court: At least second alphabetically, you will concede that, Mr. Hoffmann, right?

By Mr. Hoffmann:

Q. One is first and the other second, is that your testimony?

A. I don't think it makes any difference.

Q. Please answer my question. One would be first and the other second?

A. I would guess that would have to be so. They were both equally important in the bowling industry.

Mr. Hoffmann: I have no more questions.

The Court: Any recross?

Mr. Seeley: Just a couple.

RE-CROSS-EXAMINATION.

By Mr. Seeley:

Q. Do you have any knowledge, sir, of what the age and physical condition of that Bowlero Lanes in Lemon Grove, California, was at the time Brunswick took it over?

A. No, sir; there were too many of them for me to keep track of all 180. I just don't know. That one, and many others, I don't know.

Q. Does your company operate any bowling centers in the Colorado area?

A. No, sir.

[1716]

Q. Do you have any knowledge as to what the nature of the competition for summer bowling business was in 1965 in the Colorado Springs area?

A. No, sir; I have never been in Colorado.

Q. Now, I don't know whether I misunderstood you or not, but did you say, in answer to a question by Mr. Hoffmann, that the cost to Babylon Bowl of three games, and shoes, and a Coke, to be $1.80 to $1.90?

A. I said that's what we would sell it for.

Q. If you have a bowling lane which otherwise would be vacant, how much does it cost you to rent that lane three games for a dollar?

The Witness: May I have the question again, please?

(Question read.)

Mr. Hoffmann: I am going to object to the question, your Honor, as not proper cross-examination. It makes an assumption for which there is no underlying testimony.

The Court: Mr. Seeley is on recross-examination, Mr. Hoffmann. I will permit it.

Can you answer it, or no?

A. Mr. Seeley, there is no bowling center in the world that does not have a major portion of each 24-hour period when the lanes are not used. In effect, we are

[1717]

a service business and we sell time only, mainly what we call prime time. All other time—and that is the majority of each 24-hour period—is dead time.

But if I were to accept the intimation of your reasoning, then if we got 10 cents a line, that's better than nothing.

[1718]

Q. Right.

A. Technically, it may be so, but one couldn't stay in business very long, not when we know that every line, the year around, costs us in excess of 40 cents a line.

You cannot remain in business very long by selling three lines, and a Coke, and a hot dog, and giving free shoes for a dollar.

The Court: You mean rent free shoes. You don't mean to give them.

The Witness: Well, the use of the shoes. When I say give them, I meant the use of them. I'm sorry.

The Court: Yes.

A. (continuing) So that if you mean do I agree that ten cents is better than zero, the answer is obviously yes.

• • •

[1719]

JOHN L. HANIGAN.

DIRECT EXAMINATION.

Mr. Hoffmann: With your Honor's permission, my colleague, Mr. Agee, is going to read from the lectern.

We thought it might be faster. He is going to read from the testimony given by Mr. Hanigan. We had broken off in the middle of that the other afternoon.

[1720]

The Court: All right.

Mr. Agee: I will be reading from the transcript, Volume 6, of the first trial. We have chopped this up considerably. I am going to begin at page 734.

The Court: The testimony of whom?

Mr. Agee: This is J. L. Hanigan. I am resuming my role of Mr. Hanigan.

And this was taken in April of 1968. The bottom of page 734 in the trial transcript, which refers to page 100 of the original transcript.

"Mr. Hoffmann refers to the statement"—

Mr. McNeill: Excuse us, your Honor. My understanding was that we left off at page 728. Have you skipped now to page 734?

Mr. Agee: Yes, we have, if that's all right. Page 734 of Volume 6. And as we have done in the past, the questioner in all instances is Mr. Hoffmann and in this instance the answerer is Mr. Hanigan.

"Moving to Page 100, the bottom two-thirds, Mr. Hoffmann refers to the statement made on Page 9 of 'Let's Talk Facts';" and that's Plaintiff's Exhibit 28:

"Just as you must be paid for games bowled—

[1721]

The Court: You lost me. What page is it on? 734, you said?

Mr. Agee: 734 of Volume 6. I am physically reading from that Volume 6 of the first trial transcript, picking up at the bottom, and making the appropriate reference to the original.

The Court: Proceed.

Mr. Agee: "Just as you must be paid for games bowled so must we be paid for equipment and services sold. This is nothing more than simple good business sense." And then dropping down a little bit. "Carrying a customer of this kind," referring to a proprietor who hasn't been paying his bills, 'is not good or fair to the bowling industry and certainly not to Brunswick.'

"Is this an expression of Brunswick's policy, that it would not carry customers who did not pay their bills?"?

"Answer: It says here it is also a fact that there are proprietors who purchase new equipment and then choose not to pay even though lineage and income is adequate. This action, of course, allows these proprietors to gain a considerable and unfair competitive advantage over the proprietor who pays his bills. Carrying a customer of this

[1722]

kind is not good or fair to the bowling industry and certainly not to Brunswick.

"That is a statement of our policy."

"Question: Are you suggesting that there might be a difference between carrying proprietors who purchase new equipment and then choose not to pay even though lineage and income is adequate and carrying proprietors who are in the same posture but whose lineage and income is inadequate?

"Answer: We have in many cases extended the time of payment for proprietors who are doing their very best to pay us but who have inadequate cash flow.

"Question: But in either case whether the lineage and income was adequate, or inadequate, wouldn't it be unfair, competitively, to carry the delinquent proprietor in terms of the consideration set forth in the second sentence, that is to say, this action——

"Answer: It would be if we carry them forever; but we have definite policies which were set in December, 1964, which make sure that this does not happen. But at the same time, it was our feeling when they were set that some of these proprietors needed help, and being human we

[1723]

tried to help them. However, when we became convinced that someone was either beyond help or was deliberately misleading us, why we then decided that the only thing to do was to repossess the equipment.

"Question: Well, isn't this paragraph designed to tell the reader that when the proprietor fails to pay whether he has lineage and adequate income or not, the permitting him not to pay allows the proprietor to gain a considerable and unfair competitive advantage over the proprietor who pays his bills, isn't that the sense of it?

"Answer: Well, this, of course presupposes that the two proprietors are in fact competitive.

"Question: Indeed yes, because of the sentence, the phrase unfair competitive advantage. But premising that that is a fact——

"Answer: I would like to read the second paragraph.

'In cases where a proprietor is experiencing difficulty and is not meeting his obligations, we will make every effort to work out a practical solution to our mutual advantage. A credit counsellor will determine if refinancing is possible and practical. Once refinancing is arranged

[1724]

attendance at a management school or field seminar may be one of our requirements to help the proprietor in managing his business.'

"I don't see anything inconsistent in the two paragraphs.

"Question: Well, I put it to you that whether or not the proprietor experiences difficulty and whether or not he goes to attendance at a management school or the field seminar, whether or not his lineage is adequate, whether or not his income is adequate, that

if he is permitted not to pay his bills he gains a considerable and unfair competitive advantage over the proprietor who pays his bills. It there anything wrong with the statement I just made?

"Answer: Nothing at all; except that I didn't say that anyone was permitted not to pay their bills. They were permitted to have reasonable extensions of their debt to us. This does not enable them to have an unfair competitive advantage, because if his cash flow is low, he has to keep competitive in order to meet the payments that we would set out in such a program."

[1725]

"Question: Is it the policy of Brunswick to give upon demand extensions of credit on the same terms and conditions of credit to all of its customers who purchase the same kind of equipment from Brunswick?

"Answer: It has been since December 1, 1964.

"Question: And that is a date prior in time to this, 'Let's Talk Facts?'

"Answer: That's correct.

"Question: Now, if that is so, what do you mean by these other statements about how they would be refinanced under certain circumstances and how there will be different considerations involved where lineage and income is inadequate?—"

The Court: No, no. —"involved where lineage and income is adequate."

Mr. Agee: —"adequate or where lineage or income is inadequate."

I apologize.

The Court: That's all right.

Mr. Agee: "Answer: We have set certain credit policies for extensions beyond which we will not go. If on examination of the books of an operator we find that he is going to be able to generate cash enough to run the business

[1726]

properly and pay us within these credit policies, we will extend his debt. We will extend it also with the proviso that if his business improves his payments will be accelerated to us so that he does not have an unfair"—advantage, presumably—"over someone else who may be doing a better job.

"Question: Well, may we consider that for a moment. Suppose that there is a competitive independent bowling proprietor who is competing for the patronage of the same bowlers in the same geographical area where there is a well-meaning independent bowling proprietor who can't pay his bills and who because of circumstances you describe Brunswick is willing to carry or extend credit for, does he not get a competitive advantage over the proprietor who pays his bills?

"Answer: Well, that depends on how long a period of time you want to look at the thing. Because, actually, as part of this plan of extending credit we do, because we are taking more risks over a longer period of time, increase the rate of interest which we charge. And, consequently, you might say that the proprietor who pays his bills on time and does not get an increase in

[1727]

his interest rate has an advantage over the man who finds it necessary to extend . . .

"Question: You would say that even though he has been deprived of the use of the money which he paid over to Brunswick in order to pay his bills on time?

"Answer: If you take it over a long enough period of time, yes, I would.

"Question: And if the interest rate is such that the interest which is being paid as excess or overage by the delinquent proprietor makes up for the use of the money had it been enjoyed by the prompt payer, isn't that so?

"Answer: The prompt payer may have the advantage.

"Question: And, of course, it is possible, is it not, that the prompt payer might be able to use the money which he paid to Brunswick to improve his bowling center, to buy A-2 equipment and to otherwise make himself into a more effective competitor, isn't that also so?

"Answer: That is also possible.

"Question: But in any case where Brunswick is operating a center in the same competitive area involving both the delinquent payer who is

[1728]

favored by being given a credit extension and the prompt payer which pays the money to Brunswick on time, the Brunswick operated center which is competing against the other two would have the dual advantage, one the advantage of the use of the money from the independent proprietor who has paid on time, and secondly, accelerated rate of interest or extended credit interest or additional pay on of interest which is assessed in order to keep the delinquent payer going, is that so?

"Answer: That Brunswick would have an advantage over both of them?

"Question: Both ways?

"Answer: Oh, I think not, because in most instances wher we have taken over a house to salvage it, the house has been run down, we have to rehabilitate it, we are taking depreciation at a rate which in very many instances is more than the rate of depreciation that some of the proprietors use. Consequently, I think we are pretty much on all fours; and, of course, the other thing about this, which is the important thing, is whether we have in fact taken advantage of the situation by unfair pricing policies.

[1729]

"Question: By pricing are you referring to lineage or to equipment?

"Answer: Lineage, particularly.

"Question: Are we to conclude from the questions put by me and the answers given by you in the last few minutes that the sentence is true which says that 'Those proprietors who purchase new equipment and choose not to pay even though lineage and income is adequate are given a considerable and unfair competitive advantage over the proprietor who pays his bills,' that is true, isn't it?

"Answer: If he chooses to, sure, we let him do it.

"Question: Would you be kind enough to turn the page of 'Let's Talk Facts,' second paragraph on page eleven,"

Incidentally, that's plaintiff's Exhibit 28.

"One alternative considered is to give the proprietor a free ride; Brunswick does not collect, and the center remains open to operate with no equipment overhead.

"Is there equipment overhead when Brunswick repossesses and operates the center itself?

[1730]

"Answer: Oh, yes.

"Question: Is the center so operated charged with interest, do you know, on the equipment?

"Answer: He is charged with depreciation on the equipment.

"Question: Is interest a considerable factor for those centers who are in debt to Brunswick for the purchase of equipment?

"Answer: Yes.

"Question: So to that extent can we conclude that the Brunswick center has a considerable advantage over the independent proprietor who is in debt for equipment to Brunswick?

"Answer: I wouldn't think so, no.

"Question: Well, you said, if I understood you just a moment ago, that the interest factor for the independent proprietor who owes Brunswick for the

equipment is considerable, a sizeable amount, is it not?

"Answer: So is depreciation."

And, if we may, I would like to go to the deposition of Milton Rudo.

Mr. McNeill: Your Honor, could we have a moment for housekeeping? We haven't been ad-

[1731]

vised in advance——

The Court: How long is it for Mr. Rudo?

Mr. Agee: We have cut this to the bone, your Honor. I believe I can do it in ten minutes.

The Court: There will be a short recess, members of the jury. I will give Mr. McNeill an opportunity to review that.

What is after that?

Mr. Hoffmann: Mr. Davis.

The Court: A live witness, right?

Mr. Hoffmann: A live witness. And you may be pleased to know it is our last one.

The Court: All right. The jury will be glad to know that. A short recess.

(Short recess.)

[1732]

Mr. Agee: Your Honor, with your Honor's permission may I just read about ten seconds' worth more of the depositions of Mr. Hanigan at the end where I finished, and due to failing eyesight misread where I was supposed to stop?

The Court: Failing doctrine, or eyesight?

Mr. Agee: Failing eyesight. It is also the doctrine of failing eyesight.

I had concluded, if I may pick up just to catch the sequence:

"Question: So to that extent can we conclude that the Brunswick center has a considerable advantage over the independent proprietor who is in debt for equipment to Brunswick?

"Answer: I wouldn't think so, no.

"Question: You said, if I understood you just a moment ago, that the interest factor for the independent proprietor who owes Brunswick for the equipment is considerable, a sizeable amount, is it not?

"Answer: So is depreciation.

"Question: Do you know whether good accounting practice permits the proprietor who has bought on an installment basis from Brunswick to take depreciation?

[1733]

"Answer: I think the IRS will allow him to take it over a ten-year period, but some people take it over twenty years.

"Question: Do you know how Brunswick takes it?

"Answer: Yes, sir."

Mr. Agee: We may go on to the deposition of Milton Rudo.

The Court: What page?

Mr. Agee: Again I read physically from Volume VI. It begins at page 757, your Honor.

Now, these excerpts were taken from depositions of Mr. Rudo which were actually conducted in split sessions beginning in March 1967, it was adjourned and continued in June of 1968.

I am beginning at the bottom of 757 of Volume VI of the transcript of the first trial:

"Question: Where do you live, Mr. Rudo?

"Answer: Hyde Park, Illinois.

"Question: The address?

"Answer: 1777 Balsam Road."

If I may skip down, your Honor.

"Question: What is the business address?

"Answer: 69 West Washington.

"Question: What is the business?

[1734]

"Answer: I'm with Brunswick Corporation.

"Question: What is your position with Brunswick?

"Answer: I am vice president of the corporation.

"Question: What is your function as vice president of the corporation?

"Answer: I am a division head, division supervisor."

Moving to page 766 of the transcript, this is actually page 41 of the original deposition. Beginning with the question which reads in the middle:

"Question: At the time when the decision was reached to go into the operation of bowling centers in 1964, was there any decision reached as to the number of centers which Brunswick might acquire?

"Answer: No, because we had no concept of what existed as to what we might acquire.

"We didn't know if it would be ten or an astronomical number.

"Question: In the summer of 1964, how many bowling centers were there, approximately, in the United States?

[1735]

"Answer: 11 or 12 thousand. I'm not sure.

"Question: Would you know approximately how many of those had important Brunswick installations, such as lanes and pinsetting equipment?

"Answer: I'd say approximately half. I'm not certain of the exact number.

"Question: Can you again approximately tell us whether in the summer of 1964 most of the bowling centers using Brunswick equipment were in debt to Brunswick?

"Answer: Were most of them?

"Question: Yes. By most, meaning more than half.

"Answer: In fact I would presume so but someone else could answer it more factually than I can.

"Question: What is the situation in the United States today, can you tell us the approximate number of bowling centers?

"Answer: There is approximately 11,000 bowling establishments in the United States today.

"Question: Again, can you tell us approximately how many have purchased important equipment such as lanes or pinsetting equipment from Brunswick?

[1736]

"Answer: I would say it is about the same. Maybe a percentage or two off. I don't know.

"These are not new ones. These are the same existing—what is left is what I am interpreting.

"Question: Meaning from your prior testimony approximately one-half? Is that your testimony?

"Answer: I'm sorry, sir, I didn't hear you.

"Question: Meaning approximately one-half of those bowling centers?

"Answer: That's correct."

[1737]

Mr. Agee: Going to page 780 of the transcript.

The Court: Page what on the deposition?

Mr. Agee: Page 21.

"Question: Have you since 1964 sold any bowling centers, has Brunswick?

"Answer: Four.

"Question: Four?

"Answer: Yes.

"Question: How many has it acquired since 1964?

"Answer: We acquired 131 in the United States in 1965 and 30 in 1966."

Page 265 of the deposition, page 783 of Volume VI of the prior transcript:

"Question: Does the division budget show individual items of gain or anticipated loss for the separate centers operated by Brunswick?

"Answer: Well, each house has its yearly budget.

"Question: Is that referred to in any way in the annual five year projection as to which you have been testifying?

"Answer: No, sir.

"Question: Does the budget include, the yearly budget for each house, include anticipation

[1738]

in any way? That is to say, does it include expected earnings for the coming year?

"Answer: Yes, sir, and so far our people have been overly optimistic.

"Question: In the budgets for the Brunswick owned or operated centers, is there any provision made for depreciation and interest?

"Answer: For depreciation and interest where it is applicable.

"Question: Under what circumstances is interest applicable?

"Answer: Where we have to pay interest.

"Question: Are there any circumstances under which the Brunswick centers has to pay interest to the Brunswick Corporation?

"Answer: To the Brunswick Corporation?

"Question: Yes, or to any other branch of Brunswick.

"Answer: Offhand, I can't answer that.

"Question: You don't know one way or the other?

"Answer: No, sir.

"Question: Do you know one way or the other as to whether or not the Brunswick operated center pays interest on so much of the initial cost of

[1739]

the large equipment such as pinsetters and alleys which has not been paid for by the initial purchaser?

"Answer: There is none, and we don't get involved in the original purchaser once BCO takes it over."

Page 314 of the deposition, page 795 of Volume VI:

"Question: Mr. Rudo, you have been continuously president since February of 1967 to the present?

"Answer: That's correct.

"Question: Do you know how many bowling centers were operated by the Bowling Division?

"Answer: I know approximately.

"Question: What is that?

"Answer: Somewhere between 175 and, something around 175 right now, in Canada and the United States.

"Question: Has the number been any higher during the period when you were president?

"Answer: It may have gotten to 180.

"Question: If I suggested the number 198 to you, would that be wrong?

"Answer: It doesn't register with me ever having had that many at one time.

[1740]

"Question: How about the number 183?

"Answer: It's possible.

"Question: You don't know one way or the other?

"Answer: 198 doesn't register. 183 is possible.

"Question: Do you know when Brunswick Bowling Division first came into being?

"Answer: As it's now constituted?

"Question: Yes, as it is now constituted.

"Answer: February, 1967.

"Question: Prior to that did Brunswick maintain a division or branch for the purpose of operating bowling centers?

"Answer: Yes, sir.

"Question: What was that called?

"Answer: It was called the Bowling Center Operations Division.

"Question: And in February of 1967, was there any change in the organization or structure of that

unit, branch, or division of Brunswick which had among its functions the operation of bowling centers?

"Answer: It was consolidated with the Bowling Division, which at that time had its responsibility

[1741-1742]

to sell bowling equipment, lanes, and supplies.

"Question: Now prior to February of 1967, do you know—when I say prior, I mean in or about that time, but before the change—do you know how many bowling centers were owned or operated by Brunswick?

"Answer: I was head of the B. C. O. Division. Approximately, yes. I don't remember specifically.

"Question: When you say you know approximately, can you tell us approximately how many?

"Answer: To the best of my knowledge, as I remember it, the most we had ever got to operating was around 175 to 180.

"Question: This is prior to February of 1967?

"Answer: Yes, sir.

"Question: In 1965, in February, how many did you operate, if you know?

"Answer: January—what did you say?

"Question: 1965, January or February of that year, if you know, how many did you operate?

"Answer: In January I think we operated one.

"Question: In 1965?

"Answer: Yes, sir.

[1743]

Mr. Agee: Moving to page 317 in the deposition:

"Question: At the end of 1965, about how many did you have or operate?

"Answer: Approximately, oh, if I recall correctly, around 130 in the States. There may have been ten or fifteen in Canada.

"Question: Now as to the 130 in the States, if you know, were any of these new installations, new bowling centers, created by Brunswick for the first time?

"Answer: I don't know what you mean. I don't know—if we sold prior to—I don't know what you mean."

"Question: Do you know whether during the year 1965 Brunswick acquired by replevin, foreclosure, or any other method bowling centers previously operated or owned by persons or organizations other than Brunswick?

"Answer: Yes, sir.

"Question: Do you know how many were so acquired?

"Answer: I just gave you the figure. All of those that we have acquired, to the best of my knowledge, have been acquired by the fact that

[1744]

somebody defaulted on their payments and Brunswick had to repossess the equipment.

"Question: So what you say then is the whole 130 in 1965 were so acquired; is that your testimony?

"Answer: Every one we have as of now.

"Question: And that is true of 1966 and 1967 and 1968, is that right?

"Answer: Every one that I have heard of.

"Question: Is it also true that Brunswick did not during that period build in the United States of America any new bowling center which was not acquired from some other source?

"Answer: We built centers for customers.

"Question: Any new one which you operated yourself?

"Answer: No, sir.

"Question: That is true, is it not, for that three-year span, 1965, 1966, and 1967?

"Answer: Yes, sir.

"Question: It is also true for 1968?

"Answer: So far, yes, sir.

"Question: Do you know whether or not during this period we have been discussing from 1965 on, Brunswick sold to other persons outside the organ-

[1745]

ization any of its bowling centers?

"Answer: Yes, sir.

"Question: Do you know how many?

"Answer: Those that we operated, about seven or eight.

"Question: Can you distribute those even or eight among those three and a half years?

"Answer: No, sir.

"Question: Do you know whether they sold any in the year 1965?

"Answer: I don't remember the exact dates when we sold any of these, but in his period we did sell some.

"Question: But you don't remember within the span of over three years as to when you sold any of them?

"Answer: The specific year? No, sir.

"Question: Do you know whether you sold any at all in the last few months?

"Answer: Yes, sir.

"Question: How many?

"Answer: I know of one in Canada, two in Canada.

"Question: How about the United States?

"Answer: I don't remember any."

[1746]

Mr. Agee: May I continue?

"Question: You don't know one way or the other as to whether you sold any in the United States in the last few months?

"Answer: No, sir.

"Question: Is it your testimony the same as to all of 1968? Do you know whether you sold any in the United States during the year 1968?

"Answer: I don't remember, no, sir."

Mr. McNeill: Your Honor, was it stated for the record the dates that those two sessions of the deposition were taken?

Mr. Agee: March of 1967 and June of 1968. I did state it for the record before.

Mr. Hoffmann: I'd like to call to the stand Mr. Richard Davis.

Supreme Court, U. S.
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APPENDIX

Volume 3.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,
Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
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RICHARD DAVIS, called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Davis, what is your home address?

A. 8 Highland Drive, North Caldwell, New Jersey.

Q. Do you have a place of business?

A. Yes. My office address is 140 Market Street,

[1747]

Paterson, New Jersey.

Q. What is your business?

A. I am employed by Treadway Companies, Inc.

Q. And what position do you have within the Treadway Companies, Inc.?

A. I am vice president of that company and director of bowling operations.

Q. For how long have you held that position?

A. Well, I have been with the company since 1969 as director of bowling operations.

I became a vice president in 1970, the following year.

• • •

[1749]

Q. Then what did you do next to make a living?

A. Well, I had become interested in the bowling industry, which was beginning to sprout at that time. And I found what I thought was a very good location in Freeport, Long Island, where there was no bowling center, and with some associates I organized a group of investors, and we opened a 44-lane bowling center in Freeport in August, I believe it was, of 1959.

We were quite successful the first year. And the following year, with another group of investors, we opened a 52-lane bowling center in West Boyleston, Massachusetts, which is a suburb of a large city, Worcester, Massachusetts. We opened that in September of 1960, I believe it was.

Q. Who is the "we" to whom you are referring?

A. Well, I had one or two associates who were becoming active in the business with me. And we had, in each center, nine or ten other investors.

Some of the same people who had invested in Freeport also invested in West Boyleston Bowl, Incorporated.

Q. And you say you were successful in Freeport.

[1750]

Q. How did you fare in West Boylestown?

A. Well, not so well, Mr. Hoffmann.

• • •

[1753]

Q. Were you successful in the operation of West Boyleston Bowl?

A. No, Mr. Hoffmann. We opened in 1961. We hung on for about seven years. And we closed in 1968.

[1754]

Q. Now, sir, in 1968 did you and your associates have any bowling centers that you were operating?

A. Well, subsequent to opening West Boyleston we opened a 64-lane center in Brooklyn called Strike and Spare Lanes. I wasn't as actively involved in that, but I did take a part in the syndication of that center.

The following year, 1961, with many of the same people who had been involved in West Boyleston Bowl,

we opened another center in Massachusetts, in Framingham, Massachusetts——

The Court: Framingham?

The Witness: Framingham.

A. (Continuing.)—which had 42 lanes. That was called Bowlers' World.

And in the following year, 1962——

Q. Sorry. Did you give us the name for the one in Framingham?

A. Bowlers' World.

In the following year, in 1962, with still another group, a small group, we opened a 48-lane center—in August, I believe—in Queens, New York, called Astoria Recreation. That had 48 lanes.

Q. Any others?

A. No, that was enough.

Q. Mr. Davis, which center, if any, was known

[1755]

by the name of Lincoln Lanes?

A. Lincoln Lanes was one of our competitors in Worcester, Massachusetts.

Q. And when you say competitor, you mean competitive with what?

A. It was competitive with West Boyleston Bowl. It opened at about the same time as West Boyleston Bowl. And it was one of five centers that opened within that two-year period in the Worcester market.

Q. How far away was Lincoln Lanes from West Boyleston Bowl?

A. Well, in miles, I would have to say it was about three or four miles. It was about a ten- or fifteen-minute ride.

Q. Was West Boyleston Bowl located on any main road or highway?

A. Yes, West Boyleston Bowl was located on the north side of Worcester, on the main road going out of Worcester, which was Route 12. We were about a mile, perhaps, from the city line. We were about ten minutes from downtown Worcester. Worcester is a very large city, has about 175,000 people.

Q. And in relation to your description of Worcester, where was Lincoln Lanes located?

A. Lincoln Lanes was really pretty much in the heart

[1756]

of Worcester. As I recall, it would be just west of the center of Worcester, in a large shopping center called Lincoln Plaza.

Q. And by automobile how far apart were the two centers?

A. Ten or fifteen minutes, I would say.

Q. And in terms of mileage, what would you say?

A. I think I said before I would estimate three or four miles.

Q. In what you call the Worcester area, you say there was a total of three or four centers?

A. There were five centers within about a 15-month period.

Q. Do you know how many are there today?

A. Three. Three of the five remain. One of them has converted half its lanes to candlepins. But three of those new centers that opened in 1960 and 1961 are still in business.

Q. Which are the ones that are no longer in business?

A. Well, in addition to our center, which closed in 1968, there was a 60-lane center that had opened—I believe

in 1961—to the north of us, called Tri-Town Lanes. That was just to the north of us. And that lasted for about—they opened in '61—I think they

[1757]

closed around '63 or '64. They were only open for three or four years.

• • •

[1769]

RICHARD DAVIS, being previously duly sworn, resumed the stand and testified further as follows:

The Court: You are still under oath, Mr. Davis, right, sir?

The Witness: Yes.

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Davis, just before we recessed last night you referred to your center you and your associates had in the Worcester area?

A. Yes.

Q. And how long did you hold that center?

[1770]

A. It opened in September of 1960, and we closed in August of 1968.

Q. And—

The Court: What center is that, for the benefit of the jury?

The Witness: West Boyleston Bowl, Massachusetts.

Q. Can you tell us whether West Boyleston was a profitable operation?

A. No, it was never profitable.

Q. Now, you mentioned the opening of Lincoln Lanes.

Are you familiar with that center?

A. Very much so, Mr. Hoffmann.

Q. And it was not far from West Boyleston Bowl; is that right?

A. It was our chief competition actually.

Q. How big a center was it?

A. Lincoln Lanes has 56 lanes.

Q. Tell me, sir, did you in the operation of West Boyleston Bowl experience any aggressive acts of competition from Lincoln Lanes?

A. In which period, Mr. Hoffmann; before Brunswick took it over, or after?

Q. Well, when did Brunswick take it over?

[1771]

A. Brunswick took over Lincoln Lanes in 1965, I believe, in the latter part of 1965.

I'm not sure of the exact date.

Q. Addressing yourself, then, and I am grateful to you for pointing out the weakness in my question, addressing yourself then to the period after Brunswick took it over, did you experience any aggressive acts of competition from Brunswick?

If so, tell us what it was.

A. We did, Mr. Hoffmann, and I can't disrelate it to what had happened before, but they had the usual BCOD promotions, if I may use that word.

They had the Bowl-Your-Way-to-Europe, they had the junior program.

But the biggest problem we had really was that they offered our leagues—it is so hard to describe this without relating what happened before.

Q. Go ahead and tell us as briefly as you can what happened before.

A. You see, what happened in the Worcester area was just terrible, when five centers opened up so quickly in a market where nobody knew how to bowl tenpins.

I think I mentioned yesterday there were 175 people, but within 15 months or so from the time we opened, Lincoln Lanes and our center were the first two

[1772]

to open, there were suddenly, I believe, 268 lanes in addition to a lot of candlepin bowling establishments, most of which was older, although there was one new candlepin establishment, too, I think it was called Colonial Lanes in the northwest part of Worcester.

It was very obvious that these five centers couldn't make it. We were doing about 6,000 lines per lane, which was terrible.

Q. You were a tenpin center?

A. The five I am referring to were all tenpin centers, the ones that opened in 1960, 1961.

We were all doing terribly. It was obvious that they wouldn't all survive.

It was equally obvious if two or three survived they would do all right because here was a market there, but we were determined to be one of the survivors.

We thought we had an excellent chance for two reasons: Number 1, we were the only one that had owner management; more important, Number 2, we had a very, very low rent. We were paying $34,000 rent for 52 lanes, it was like $600 a lane, where the normal rent would be $1,000 per lane.

So this gave us a very low break-even. And we thought we could survive.

Well, within a couple of years our hopes were

[1773]

strengthened because Sixty Lanes closed to the north of us, then Town & Country in Shrewsbury converted 20 of their 40 lanes to candlepins.

Then we heard that Lincoln Lanes was going bankrupt. Had that happened there would only be 132 lanes, and we felt we would make it.

[1774]

So we were horrified when Brunswick took over the center. In fact, I visited the center during that transition period. They had a man standing there with a little notebook—he was called a keeper—and he recorded every transaction.

Well, shortly after they took over, they began to offer our leagues 8 o'clock starting time. Now, we attempted over the years—and we have been successful—we had doubled our league business in the first four or five years—we had attempted to have two shifts at night.

We had the one league at 6:45 and we had another league at 9. We weren't full, by any manner or means, but we were beginning to develop that kind of a schedule.

When Brunswick offered 8 o'clock starting time to our leagues, then we were really hurt. And over the next three years——

The Court: Wait a minute.

Mr. McNeill: Excuse me. I didn't want to interrupt. I have been trying to find the end of a sentence.

If Mr. Davis is going to testify about what happened to the leagues bowling in his house, he should be specific, giving the names of the leagues,

[1775]

the league captains, or secretaries, or whatever, rather than just a general statement that his leagues were being approached by Brunswick and being offered a certain—a different starting time.

The Court: No, I think that is a function of cross-examination. If he can't remember, that is something for the jury to weigh.

Overruled.

Proceed.

A. (continuing) Well, when this happened, we began to go downhill. And, also, it became obvious that Lincoln Lanes was going to stay open. Our business began to drop. We had never been able to make the full payments to AMF, but as long as we were making some progress, and our business was improving, AMF kept refinancing our debt, because they felt that eventually we would get out of the woods.

But once this stopped, in '67 and '68, and we were going nowhere, finally AMF came in and repossessed the equipment and removed it from the center. So, we lost $190,000 in that particular transaction.

Q. You have had experience with operating both AMF and Brunswick lanes, is that so, that is, Brunswick equipped lanes and AMF equipped lanes, is

[1776]

that so?

A. Yes, sir.

Q. Can you tell us, from that experience, whether there is any considerable difference in the carrying charges—fixed costs of a center leasing from AMF and a center purchasing on a conditional bill of sale from Brunswick?

A. It works out pretty much the same, Mr. Hoffmann. You realize that there are two parts. There is the purchase of what has been called the lanes and the pinsetters are separate transactions.

And the lanes, which include the settees, and the lockers, and even a lot of maintenance equipment, that is all in one package. That is purchased by the AMF proprietor, or the Brunswick proprietor—or was purchased—on very competitive prices, financing and interest charges.

The only difference is that in the beginning AMF leased the pinspotter for ten years at a rental of 10 cents a game, with a minimum rental of $800 a year, whereas, the Brunswick proprietor purchased the machine and paid for it over an eight-year period.

So that the combination of interest and depreciation that the Brunswick proprietor would have was the same or slightly less than the rental that the AMF

[1777]

proprietor paid to AMF.

So from a profit and loss standpoint, the Brunswick proprietor was a little better off than the AMF equipped proprietor. From a cash flow point of view, it depended upon the lineage that the AMF center did.

But generally, it worked out to about the same.

Originally, we considered both types of equipment, and from an arithmetic point of view, there was very little difference. There were other considerations that made us to decide to go with one company or the other.

[1778]

Q. You spoke of seeing a keeper at Lincoln Lanes. Do you know what a keeper is?

A. I was told afterwards that that is a——

Mr. McNeill: Excuse me. If this is a hearsay statement, I move to have it stricken.

The Court: Well, you are objecting. I sustain the objection.

Do you know what a keeper does?

The Witness: I know what this keeper did.

The Court: Tell the jury about it.

The Witness: This keeper had a little notebook, and he recorded all of the cash that was being taken in. If a customer came to the desk——

The Court: What was he, a manager?

The Witness: No, he was in uniform. He was standing on the other side, on the customer's side of the desk with a little note book and he was recording all of the receipts.

By Mr. Hoffmann:

Q. When did you see this keeper in action?

A. Well, when we heard that Brunswick was taking over Lincoln Lanes, we went over to see if it was true. I went over with my associate. And there were no signs up at that point, but there was the keeper.

Later they put up the signs and it was known as

[1779]

Brunswick Lincoln Lanes.

Q. When did your center cease doing business?

A. 1968, in August—in July or August.

Mr. Hoffmann: I would like to read to the jury, if I may, from Plaintiff's Exhibit 47 in evidence, entry number 200.

The Court: Yes.

Mr. Hoffmann: On the bottom of the second page:

Lincoln Lanes, Worcester, Massachusetts.

1965, the loss item, $28,695; 1966, a loss item $14,192; 1967 a loss item $8,828.

Q. The year that West Boyleston went out, again, was that—

A. August 1968.

Mr. Hoffmann: 1968, a plus item, $3,280. This is for Lincoln Lanes. And then 1969, a plus item, $20,646; 1970, plus $31,960; 1971, $36,112; 1972, $17,753.

Q. Now, sir, in relation to your operation of bowling centers, did you have any other centers in which you had an interest, which were confronted with Brunswick competition?

A. Well, in Freeport, which was the center to which I devoted most of my time personally, we were two miles

[1780]

from Roosevelt Lanes, which was taken over by Brunswick in 1965. And, generally speaking, we thought we had a nicer center than Roosevelt.

The only problem we had with Roosevelt was that they were always a nickel less for bowling than we were. I only had one league problem with Roosevelt Lanes.

Q. Were you a member of any of the bowling proprietors' associations?

A. Yes, Mr. Hoffmann, wherever we operated that there was a bowling proprietors' association, we always joined and were active.

Q. And did you belong to the proprietors' association which functioned in the area of Nassau County?

A. Yes, I was most active in that particular association, in Nassau County.

Q. Did you hold any office in it?

A. Yes, I held several offices. In—I believe it was in 1964 and 1965 I was president of that association for two years—.

Mr. Hoffmann: I would like to have marked, please, as Plaintiff's Exhibit 62 for identification what appears to be copy of a letter, Richard A. Davis to Mr. John L. Hanigan, president of Brunswick Corporation, under date April 16, 1965.

[1781]

(Marked Exhibit P-62 for identification.)

Mr. Hoffmann: And I would like to have marked as Plaintiff's Exhibit 63 for identification a copy of a letter, Milton Rudo of Brunswick Corporation to Mr. Richard A. Davis, president, Nassau Bowling Proprietors Association, under date of May 3, 1965.

(Marked Exhibit P-63 for identification.)

Q. Mr. Davis, I show you Plaintiff's Exhibit 62 for identification and ask if you can tell us what it is?

A. This is a letter that was sent by me, acting as president of the Nassau Bowling Proprietors Association, to the president of the Brunswick Corporation in 1965.

• • •

[1788]

Court Reporter:

"This is a letter that was sent by me acting as president of the Nassau Bowling Proprietors Association to the president of the Brunswick Corporation in 1965."

The Court: Then he said under what circumstances, and then Mr. McNeill interrupted. I think Mr. Davis should be alerted that this Court will not permit you to testify as to the second paragraph of that communication.

I have made a ruling heretofore in regard to the resolution passed at the Puerto Rican convention. Mr. Hoffmann may interrogate with that admonition in mind.

Mr. Hoffmann: May I now offer into evidence both plaintiff's 62 and 63?

The Court: Both into evidence.

(Exhibits P-62 and P-63 received and marked

[1789]

into evidence.)

Q. Mr. Davis, looking at plaintiff's 62, that is to say, the letter to Mr. Hanigan, that was the letter sent by you, was it not, in your capacity of president of the Nassau Bowling Proprietors Association?

A. It was.

Q. And would you be good enough to read aloud the first paragraph, and just the first paragraph, please, of the letter?

That's the one starting, "Our association."

A. "Dear Mr. Hanigan.

"Our association views with alarm and deep concern the assumption by the Brunswick Corporation of the ownership and operation of certain bowling establishments."

Q. And then would you read aloud the very last paragraph, the one starting, "We would—"

A. "We would appreciate a policy statement of your company's position on this matter at your earliest convenience."

Q. Now, sir—

The Court: I'm not sure that the jury recalls, but this is a letter—tell them, Mr. Hoffmann.

Mr. Hoffmann: Addressed to Mr. John L.

[1790]

Hanigan, who is the president of the Brunswick Corporation, and the letter is April 16, 1965.

Q. Do you notice some handwritten material up at the top of the exhibit?

A. Yes, there is a note that it was received, in handwriting in the upper left it says, "Milton Rudo, please hand deliver," and there are some initials—

Q. They look, do they not, like J. L. H.?

A. Yes.

Q. I address your attention to plaintiff's 63.

A. I don't have a copy of that.

Q. Would you be good enough to read the paragraph—

"Dear Mr. Davis: Mr. J. L. Hanigan has referred to me your letter of April 16, 1965, for reply."

Now, the next "Neither the Nassau Bowling Proprietors Association nor any other proprietors association or individual proprietor have any legitimate cause for alarm or concern over operation by Brunswick Corporation of a relatively few bowling establishments."

Mr. Davis, do you know how many bowling establishments BCOD operated after May 3, 1965?

A. Do I know now?

[1791]

Q. Yes.
A. Yes.

[1792]

Q. How many, sir?

A. Well, at one time or another they have taken over close to 260, I think, they have operated about 180 each year for the last seven years, between 180 and 200 centers.

Q. Would you share the characterization that that's a relatively few bowling establishments?

A. No, that's not a relatively few.

Q. Now, in the next paragraph you notice the sentence starting "In this posture"?

A. Yes.

Q. "The most prudent measure that could be taken in certain instances was for Brunswick to then assume the operation of establishments on a salvage basis in an attempt to bring it back to the point where it could stand on its own feet. During the course of salvage and at an appropriate point Brunswick will consider responsible offers to sell the establishments as a going business."

Do you have any knowledge as to whether or not Brunswick ever sold any of these establishments as a going business?

A. The only figure I have ever heard was the figure of two at one point, and I think the figure of five or six at some other point. I know of none myself that

[1793]

they have sold. I don't know of any particular ones.

Q. Now, Mr. Davis, do you have any knowledge of Brunswick building new bowling establishments?

A. Yes, I do, Mr. Hoffmann.

Q. What is that?

A. Well, the first knowledge I had directly from somebody in Brunswick was in early 1970, I placed a call to Brunswick's home office, and I asked for Mr. Thomas, and he wasn't in, so I asked to be connected with the person who was in charge of their new establishments.

I was, frankly, on a fishing expedition. And they connected me with a Mr. Zink, and I asked him if the new establishments in Chicago and Fort Wayne were open for bids. I thought this would be a good way to find out for myself.

And he said, yes, that the bids had gone out on one of them in what are called the Dodge Reports, and that the bids would be going out on the other one very shortly, within a week or two. This was in March of 1970.

Subsequently I had visited—visited one new center which Brunswick had built in California. That was last July.

Q. When you speak of bids going out, was it

[1794]

your understanding that what was meant by that is bids for the construction of the center?

A. Yes, when the plans are ready it is common practice to have the Dodge reports, which are used by the construction industry, to let contractors know that these contracts are being considered, and if they want to bid for any part of the contract it tells them where they can get the plans and how they can make a bid.

Q. Mr. Davis, do you have any knowledge of Brunswick acquiring centers which were not centers operated by Brunswick's debtors, that is to say, by bowling operators who were in debt to Brunswick for their equipment?

A. Yes, I do.

Q. Tell us about that, please.

A. I visited three Brunswick centers that were close together here in New Jersey about two years ago, Carteret —Brunswick's Carteret Lanes, that was a 32-lane center with Brunswick equipment, and Brunswick's Edison Lanes, which was a, I think a 40-lane center with Brunswick equipment, and Brunswick's Rahway Lanes, which was a 24-lane center, but which was completely equipped with AMF equipment, from stem to stern.

Q. You visited Rahway and you say it was——

A. AMF.

[1795]

Q. —AMF equipped center?

A. Completely. It had AMF pinspotters, it had AMF settees, it had AMF lockers, it had AMF ball returns, it even had, which surprised me very much, it had AMF pins in the machines.

It is very easy to distinguish the different brands of pins by their markings.

Q. How did you know you hadn't wandered into an AMF center; how did you know it was a Brunswick center?

A. In many ways. First of all, it had all of their signs. It had signs showing the different Brunswick divisions, Bowl-Your-Way-to-Europe, and behind the control desk there was a sign that said, "This is a Brunswick-operated center."

They had the Brunswick menu in the snack bar.

But that sign alone was enough to tell me.

And it is listed, incidentally, on the profit and loss statements which you received under subpoena or from the Court and which have been turned over to us for analysis, it is listed there as an operated center, and on that report

it shows that they pay machine rental to AMF, so those are leased machines according to their own profit and loss statement.

Q. Now, Mr. Davis, coming back to the Nassau Proprietors' complaint, did you in your capacity of

[1796]

president of this association, the Nassau Bowling Proprietors Association, have any occasion to meet with Brunswick's people in order to press complaint on behalf of the proprietors with them?

A. Yes, we did.

Q. When did that happen?

A. Well, after we got Mr. Rudo's reply, we felt it was very unsatisfactory. And one of the officers of our association who had always been quite friendly with the top people at Brunswick, he was a vice president at that time of our association, Mr. Goldberg, said he would set up a meeting with the proper people at Brunswick and we could straighten out the matters that we had complained of which related to Sunset Lanes in Long Island.

[1797]

Q. Did such a meeting, in fact, take place?

A. Yes. It took place I would—in order to pinpoint the date, I'd say it was obviously after Mr. Rudo's letter, which was May 3, 1965, and according to the best of my recollection it was before the national convention in San Juan, which would have been the end of June, so it was probably in early June 1965 we had a luncheon meeting set up at a restaurant called the Sky Club at Roosevelt Field in Nassau County.

At that meeting we had three Brunswick representatives, three representatives of the Nassau Bowling Pro-

prietors Association, and three representatives of the Suffolk Bowling Proprietors Association.

Q. What was the substance of the meeting?

A. Well, the—we had two main areas of complaint.

The Brunswick representatives were Mr. Jack Thomas, sitting over there (indicating), Mr. Bernie Rudo, who was, I believe, at that time in charge of the Brunswick operated centers, and Mr. Al Weiner, who was the regional manager for the Brunswick operating centers.

And the Suffolk proprietors led off first of all because they told——

Mr. McNeill: Excuse me. I will object to—he has identified already the three Brunswick

[1798]

representatives——

I will withdraw it.

The Court: Yes.

The Witness: Should I identify anybody else?

Q. You have identified the people from Brunswick.

A. Yes. I can identify the others if you want.

Q. Who else was there?

A. I was there, Mr. Goldberg, and Mr. Ullian from Nassau County, and the president of the Suffolk Association, Mr. Vic Barkas, their secretary, Mr. Schill, and a Brunswick proprietor, that is, a proprietor of a center that had Brunswick equipment, Mr. Manderola.

Those were all of the nine people who were there.

Q. Would you come back, please, to the substance of this meeting?

A. Well, the Suffolk proprietors told Mr. Thomas, who was really, I guess, the senior Brunswick representative there, or we considered that he was, about the various in-

ducements which Sunset Lanes had given to the Airborne Instrument leagues to get them to come across the street from Viking Lanes to bowl in Sunset Lanes.

There were the turkeys—I don't know if you want me to go into all of the things that were said

[1799]

yesterday. It was all of the things that they had calculated were the equivalent of, I think, 21 cents a game.

I must say I think Mr. Thomas was surprised when he heard this accusation and he——

Mr. McNeill: I would like to have the last part stricken, please. If he would say what Mr. Thomas said without stating Mr. Thomas' state of mind——

The Court: So ordered.

How do you know he was surprised?

Did he say so to you?

The Witness: Well, he turned his head——

Q. Pardon me. You are answering now how you know he was surprised?

A. I know he was surprised because he turned his head to Mr. Weiner, who was directly responsible, with a kind of a questioning look, you know, like, "Is this possible?"

He turned to him to answer. And that was an indication of surprise on my part.

And Mr. Weiner said, I remember it very clearly because I thought it was a really dumb answer to give in front of a bunch of proprietors, he said, "Well, we have to fill up the house."

[1800]

And then Mr. Thomas was really upset, if I can judge the expression on his face.

Q. How do you know he was upset?

A. Well, after the meeting, after the meeting he took me and Mr. Goldberg and perhaps one of the other guys aside and said that he was not aware that all these things had happened, and he said leave it to him, they wouldn't happen again in the future, that this situation would be corrected.

The other area of complaint which the Nassau proprietors had was one of concern that Brunswick, which at that time hadn't come into Nassau County, they did later, but they didn't have any centers in Nassau County, the fear that the Brunswick proprietors—when I say the Brunswick proprietors, the independent proprietors who had Brunswick equipment—had, which really, I believe, was their biggest fear, generally speaking they were doing fairly well, they were making some money, but many of them, perhaps most of them, were having difficulty in making their full payments to Brunswick.

And their concern, as they expressed it to Mr. Thomas, was that here they were, perhaps they were supposed to pay $60,000 a year in notes and they could only pay $40, and they were afraid that they

[1801]

might be foreclosed.

And they were also afraid that Brunswick would put equipment into centers that it took over, which they couldn't afford to put in, or would put in parts, pins and so forth, which Brunswick didn't have to pay for at retail, and then Brunswick would have this advantage——

And this was the question they put to Mr. Thomas. At that time some of them were concerned about Telescore, which many of them didn't have, they were concerned about, I think, the A-2 had come out at that time, yes, I think it had, they were concerned about that.

And Mr. Thomas answered them. He said that anything that went into a center that Brunswick operated they'd be charged the same price, and they'd be charged on the same terms as if Brunswick had sold that to an individual proprietor.

That was his answer to their question.

Q. Is that about the sum of it?

A. Yes, sir. That's basically what happened at that luncheon meeting.

Q. Now, then, Mr. Davis, how long have you now been with Treadway and its predecessor company, National Bowl-O-Mat?

[1802]

A. Since 1969.

Q. And in the course of those three and what, a quarter years, what have your duties been?

A. Well, my primary responsibility is the supervision of our bowling centers, I am responsible for every facet of their operation, and personnel, promotion, maintenance, particularly to watch the figures which we get on a daily and weekly and monthly basis, to see if there are any areas of management concern, and then to take action to correct any problems that come up.

[1803]

Q. And in the discharge of those duties have you become familiar with the various Treadway-operated bowling centers?

A. Oh, yes. In order to carry out my duties I have to visit the centers, and I visit them all as frequently as I can, and their competition.

Q. And you said "and their competition"?

A. Yes.

Q. Have you also visited their competition?

A. Yes.

Q. Now, sir, do you know the center called Belmont Lanes in Pueblo, California?

A. Yes.

Q. Have you had occasion to visit that center?

A. Yes. Each time I go to Pueblo I make it a point to go over and look at Belmont Lanes.

• • •

[1804]

Q. Now, in the Paramus area, the competitive area around Paramus Bowl, are you familiar with the Brunswick centers there?

A. Yes, I am.

Q. What are they?

A. Fair Lawn, Ten Pins on the Mall, which is the closest, Interstate in Ramsey, and Lodi Lanes.

Mr. Hoffmann: I'd like to have marked as Plaintiff's 64 for identification the BCO division, Brunswick Corporation, five-year plan, '66-'70.

(Exhibit P-64 marked for identification.)

Mr. Seeley: No objection.

Mr. Hoffmann: I offer it into evidence.

The Court: Into evidence, P-64.

(Exhibit P-64 received and marked in evidence.)

Q. Now, I'm going to read to you, Mr. Davis, from page 17 of the Brunswick BCOD five-year plan—by the way, do you know what this five-year plan is?

A. I have seen this before.

Q. Can you characterize it generally as to what it is?

A. Well, it is a confidential divisional plan, which is

prepared for top management and brought up to date each year by recasting it one year further ahead, so

[1805]

each year they move five years further ahead.

Q. It is for the BCOD division of Brunswick?

A. Yes.

Q. On page 17 there is the heading, "Plans for meeting objectives," and a subheading, Objective No. 3:

"Continue the bowling image building plan."

Item small Roman numeral iv, "The A-2 conversions in the better houses and certain geographical areas will aid in increasing revenue, enticing competition to try to convert also, and thus assist the bowling division sales."

Now, sir, from your inspection or examination of the premises of the competitors of the plaintiff can you tell us whether or not Belmont has A-2 equipment?

A. Belmont does have A-2 equipment.

Q. And coming into the Paramus area, do you know about Interstate?

A. Interstate does have A-2 equipment.

Q. How about Fair Lawn?

A. Fair Lawn also has A-2 equipment.

Q. Do you know of your own—can you think of any others?

A. I don't believe that Ten Pins has A-2's, and I don't believe that Lodi does. I may be wrong about Lodi, but I don't believe that I remember them there.

[1806]

I know Fair Lawn and Interstate.

Q. Do you know of your own knowledge how much it costs to put in an A-2 conversion?

A. I never bought them myself. I thought it was in the range of $1,800 to $2,000 a machine.

It is a rather big modification of machine, to change a good part of it, the whole back end——

Q. Can you roughly give us any number as to what the average number of lanes in a bowling center might be from your experience?

A. Well,——

Q. Say in the Paramus area.

A. I would say the average is 32 lanes, if you took an overall average.

Q. For the sake of arithmetic, suppose we were dealing with a 30-lane center?

A. Then you'd be talking about 55 or 60 thousand dollars.

Q. That's to convert to A-2; is that right?

A. Yes.

Q. Now, you have been the assistant to Mr. Lieblich, the president of the company; is that your testimony?

A. My original title was assistant to the president, and now I am vice president.

[1807]

Q. Are there other vice presidents?

A. Each division has a vice president.

Q. You are responsible——

A. For the bowling division.

Q. Does that reach to financial matters as well as other bowling matters?

A. Very much so, the heart of my responsibility, really.

Q. Now, there has been testimony in this case concerning the damage to the plaintiff centers, and there is an exhibit, Plaintiff's 53.

Did you have anything to do with the preparation of that exhibit?

A. Yes, I did.

Q. Did you work with Mr. Lieblich on it?

A. Yes, Mr. Lieblich and I spent quite a bit of time together to prepare this exhibit.

Q. I am going to take you, please, I will ask you please to look at this and tell us as best as you can the basis for the computations which were made; for example, in respect to Holiday, the first entry there, I note the number of years, that's the period of time for which we claim damages; is that right?

A. Yes.

Q. Then it starts at 12/10/65.

[1808]

Can you tell us, please——

Mr. Hoffmann: With your Honor's consent I will push away from here so that people can see it——

Q. (Continuing.)—can you tell us, please, how that base was arrived at?

A. The 12/10/65 was the date that Brunswick took over the operation of Dutchess Lanes. Dutchess Lanes closed in June 1969.

8/31/69 would be the end of our fiscal year. And of course by June the year's business is essentially ended, July and August are very slow months.

Q. And of course you didn't include after Dutchess closed——

A. No.

Q. Only for the period that Dutchess was in competition with Brunswick? The particular date, 8/31, corresponds with the end of the fiscal year of the Treadway bowling operation; is that right?

A. Yes.

Q. The additional annual bowling revenues referred to in the first column, how is that derived?

A. Well, in the case of Holiday and in the case of Paradise it was a lot easier to do at this time than it was three years ago.

[1809]

Q. Why is that?

A. Well, three years ago Star center was still open in Puerto Rico, and three years ago Dutchess had just closed, so we had to estimate what would happen.

As a matter of fact, I was very conservative last time in my estimation in Holiday. But now, when Mr. Lieblich and I prepared this chart, we looked at our actual increase in bowling revenues since 1969.

Q. When you say "actual increase," you mean——

A. What we are doing right now.

Q. What you are doing now?

A. As against what we did in 1969.

Q. And you mean also what you are doing right now since Dutchess closed down; is that right?

A. Yes.

[1810]

Q. And then how did you come by these figures?

A. Well, our——

Q. The first column, "Additional annual bowling revenues," 60 to $75,000?

A. How do we come to that figure?

Q. Yes.

A. Well, our actual increase in bowling from the 1969 year, which was the last year of our claim, to the current time, is approximately $110,000.

Now, we couldn't attribute it all to the closing of Dutchess. We felt that about two-thirds of that could be attributed to the closing of Dutchess, so we took two-thirds of that increase, which was 100 to 110,000, and we gave

the 60 to 75,000, which would be the portion we'd attribute of the actual increase, the portion we'd attribute to the closing of Dutchess.

Q. You say you made similar estimates three years without the experience?

A. Yes, I'm saying they were very conservative compared to what happened.

Q. What were those estimates?

A. In the case of Holiday, our estimates ranged maybe $30,000, 35.

And of course the events turned out to be quite

[1811]

different.

Q. Now, just briefly, there has been a lot of testimony about this, the next column after you made your computation of 60 to 75, "net income per thousand dollars of bowling revenues," what does that reflect?

A. That reflects the improvement in profit or net income that would result from an additional thousand dollars in bowling in that particular center, and it reflects the fact that there is other income besides the bowling which goes with the bowling, such as the food business, the bar business, the pro shop, shoe rental, vending income, miscellaneous income, that is part of the bowling operation.

And so that actually once all of our expenses are paid, once we have taken another thousand dollars of bowling in Holiday, our figures show that our profit goes up to $1,328.

Q. What does this show?

A. Multiplication of the estimated improvement of income by the improvement in profit that would go with it, so it shows per year from the closing of Dutchess we claim an improvement of profit of 79,680 to 99,600.

And then if that's multiplied by the number of years——

[1812]

Q. Three and three quarters?

A. Yes.

Q. This brings you to—this is just the product of the multiplication, is it not?

A. Yes. And I checked the arithmetic very carefully.

Q. Now, sir, you spoke of having experience in connection with Paradise. What was that experience?

A. Well, again, it is based on what is actually happening, it is a little more complicated than Holiday.

Q. Can we come at it this way: The dates, please, we claim for eight years, do we not?

A. Yes. Mr. Lieblich and I had some discussion about whether we should terminate our claim on 8/31/70, which is what we have done, or whether we should carry the claim forward to the day that Star actually closed, which was late October of 1972.

We had some discussion as to what to do.

Q. Why did you pick 8/31/70 as the termination of claim?

A. We felt, and I had good reason in coming to this conclusion—we felt that while the Star remained open after 8/31/70, it was going downhill fast,

[1813]

the guy that was running it was never there, they were not the tough competition that they had been up to that point —if I can use slang, they were dead but they didn't know enough to lie down. It was a dying thing.

Q. You make that statement on the basis of your own observation?

A. Of my own observations every time I visited the place.

I knew the man that was operating it the last two or three years. When I first went down there in 1969 and 1970, and I always visited Star, I'd meet Buss Stewart and talk to him, in fact, I had dinner with him, but after the first year or so that I went down there, from about that point on when I would go down to—when I'd go over to the Star and ask for Mr. Stewart, they'd say he is back in the States, he is back in Delaware, because he had moved down, he had kept his bowling centers in the States, he had two centers up here.

So he was never there, and the place was just deteriorating terribly.

[1814]

Q. So this terminal date here is a date which reflects the fact that Star had just deteriorated so you no longer thought it was real competition?

A. They were still doing business, they were still open, they still had leagues, they still had business, but really, they were not the competition they had been up to that time.

We thought it would be conservative to terminate our claim on that date.

Q. And the initial date, 9/1/62——

A. The initial date relates to the discrimination which we claim that the Brunswick Corporation gave to the Star while they were exacting every dollar from us in payment.

Q. Now coming to this first column in connection with Paradise, "Additional annual bowling revenue," Mr. Davis, what underlies this claim, 100,000 to 120,000?

A. Well, we began to pick up revenue from the Star in 1971 and 1972, but the Star closed the end of October, and on several occasions since then I have reviewed and analyzed our current business now that the Star is closed, I have been down there about four times since the Star

closed, and I have projected that this year, based on our actual improvement to date, we are going to do about $270,000 in bowling volume.

[1815]

In 1970, if my memory is correct, we did about $170,000.

So we have picked up from the 1970 figures to this year now that the Star has closed $100,000.

That's where the lower figure came from.

The reason we say 100 to 120, we didn't have the benefit of Star's being closed for the full year, Number 1.

And for the first couple of months after they closed, the leagues that were bowling at the Star were kind of up in the air, they didn't know what to do. And we really didn't start getting their leagues until January and February.

So that next year with the full complement of bowling that we received from Star we feel that we will do at least $120,000 over the 1970 year.

So this is based on our actual experience, Mr. Hoffmann.

Q. Do you know offhand from your memory what year Paradise became a profitable operation, that is to say, showed a net income rather than a loss?

A. That's another reason that led us to the 1970 figure. Up until 1970 Paradise had always lost money, but in 1971 and 1972 we finally turned the corner, and we finally were in the black.

[1816]

Mr. Hoffmann: With your Honor's permission, I'd just like to refer to Plaintiff's 21 in evidence, which shows all years at a loss from—from 8/31/61 right through 1970.

And then for 8/31/70 it shows a plus of 6,883, and then for 8/31/72 it shows an additional plus, to 23,344.

Q. Now, do you have any experience, Mr. Davis, in connection with this computation which reaches into the year 1973 for Paradise, that is to say, we are now in the month of April, do you have any knowledge of the Paradise earnings for the first three months or four months of 1972?

A. Oh, yes. You mean what our current year will show?

Q. Yes.

A. Yes, we have our six-months figures in, because our six-months period ends February 28—

Q. Pardon me. That's the six months?

A. The first half of the '72 year is in already. We have all of those figures, and our projection—

Q. I will then interrupt you again, forgive me.

When you say the first half is in, you are talking about a fiscal year, are you not?

The Court: '72-'73?

[1817]

The Witness: '72-'73.

Q. In other words, the fiscal year ends on August 31 according to your record keeping?

A. Yes.

Q. When you are talking about the first half you are talking about a six-months starting September 1?

A. September 1972 through February 1973.

Q. Sorry to interrupt you. Tell us again about your experience in this period.

A. Based on our experience for the first six months, our expenses and our income, we forecast a profit this year in the 1973 year, full year, of approximately $100,000.

Q. And that would correspond with the lower range of this—

A. No, I said we have achieved a—since 1972, since 1970 we have achieved an increase in bowling revenue of $100,000.

Q. And this is additional bowling revenue?

A. Yes.

[1818]

Q. Now, sir, is there any reason to suppose that that would be a constant, or is $100,000 the maximum which you think your experience would suggest that you would produce the next year?

A. No, because the Star Bowling center had about 400 league bowlers, and when the Star closed, two small leagues came over to us right away, IT&T lathes, and IBM league, they were just a small part of it.

The other leagues we didn't get until January and February.

So next year we will have a full year with those leagues, and incidentally, in Puerto Rico we go all year round, there is no winter and summer, so that that league revenue will alone, plus the fact that Star was still open in September and October, we feel it will do at least 120,000 next year or $20,000 more than this year.

Q. Now, you used this multiple of 1247. Again, how did you come by that, what does that represent?

A. That's based on the last eight years of actual experience for the other revenue that goes with the bowling to show the total effect on our net income of an increase of $1,000 in bowling.

Q. Then this is just the result of the multi-

[1819]

plication. And then you find the time span, isn't that so, in order to get your total amount of damages?

A. Yes.

Q. And was it your testimony that you felt that that time span could have been longer, but you wanted to give recognition to the fact that Star wasn't much of a competitor by the end of that period, 8/31/70; is that right?

A. That's right.

Q. Now, in connection with Paramus Bowl-O-Mat, what was the basis for your calculation of additional annual bowling revenue of 120,000 to 140,000?

A. Well, I had always felt that the effect of the closing of the Brunswick centers on our Paramus center would be in this range,

I believe, if my memory is correct, I believe at a prior hearing I testified to my feeling that it would be $125,000, and at that time I don't think Brunswick had Lodi.

This is basically the same feeling I had as before, that Ten Pins on the Mall, of course, is our closest competitor, and Fair Lawn—actually, it is a question of how much bowling a center can reasonably expect to be expected to do.

The four Brunswick centers on the market do over

[1820]

$900,000 in bowling. Obviously, we couldn't take all of that bowling business.

But if we got this additional amount of business which we could handle, daytime business, open bowling, weekend bowling, that we could easily handle this amount of business, and it would be available to us if Brunswick were not operating in these centers.

[1821]

Q. Do you know, Mr. Davis, what the lineage per lane has been at Bowl-O-Mat Paramus? I would like you to look, if you will, at Plaintiff's 13 in evidence.

A. Well, during which period do you want me to—

Q. Well, if you would be good enough to look at the figures for the period of time just before the upswing in bowling; would it be fair to say '68 to '71 would characterize that?

A. Yes. In fact, in '68, '69, '70 and '71, each year we did between 6,800 and 7,000 lines. We didn't quite hit 7,000 lines per lane in any one of those years. In '72 we had a little improvement.

Q. How many lanes are there at the Paramus Bowl-O-Mat?

A. 36.

Q. Can you tell us about what the capacity would be, that is to say, how many lines per lane there could be at these lanes in Paramus?

A. Well, yes, I think I could, Mr. Hoffmann. My own personal experience, running Freeport Bowl, we did close to 15,000 lines at one point. And I notice right here in Paramus' own figures that in 1961 we did almost 14,000 lines.

Q. So that there is no problem about accommodating the additional bowling?

[1822]

A. No, the additional business would bring us up to a little over 14,000 lines, if my memory is correct.

Q. Which is not far from where we were in 1961, is that right?

A. That is correct.

Q. That figure was 13,830 lines per lane. Now, you say you made some calculations three years ago that did not include Lodi, is that right?

A. That is correct, sir.

Q. Were they far from the present calculations?

A. I believe my testimony indicated $125,000 for an improvement in Paramus.

Q. That's in here, the bottom end of this exhibit.

A. Yes. Now I have to take a count of Lodi.

Q. Here is net income per thousand of bowling revenues—multiplied by $1,140, what does that represent?

A. That represents the eight-year experience in that particular center of the additional net incomes that would come with each additional $1,000 of bowling.

Q. And this is simply the result of the—

A. Multiplication.

Q. —multiplication, $136,800. Now, the figures here, from 3-26-65 to—

A. The first eight is the date Brunswick took over

[1823]

the operation of the AIBC centers, in '65, and they became Brunswick operations. And we claim it right up to the present date.

Q. They became, in effect, competitors at that time with Bowl-O-Mat Paramus, is that right?

A. Yes, sir.

Q. And you claim it up to date, eight years?

A. Through last Sunday.

Q. I beg your pardon?

A. Through last Sunday.

Q. Is the center open on Sundays?

A. Yes, sir.

Q. And that's your grand total (indicating)?

A. Yes.

Q. Now, Pueblo, the figure for additional annual bowling revenue, $90,000 to $100,000, how did you come by that figure?

A. Well, in Pueblo, Colorado, this is a very confined, clear market. You don't have to worry about the next

town. Everything is contained in that one community. And there has been a lot of testimony about the Pueblo market. I make a distinction in my mind, Mr. Hoffmann, between old fashioned centers and modern centers.

The modern centers are those that have been built since the pinsetter was in existence and in buildings

[1824]

that were built for that purpose.

And the old fashioned centers are centers that had pin boys years ago and then put in machines.

And in Pueblo, Belmont is, of course, a most modern center. And our center is a modern center. Payne's and Park are really what you would call old fashioned centers. And Bowlero is quite in between.

And once a person has bowled in a modern center they are not going to go back to a small old fashioned center. It is unlikely.

Looking at the business Belmont is doing, first of all, whatever daytime business they have, I felt we would get them, practically all of them, because we have the facilities, as they do for daytime business.

As far as leagues are concerned. I perhaps am a little more familiar than some of the previous witnesses. We are about 80 per cent booked on our early shift. And we only have one 20-team league, which is 10 per cent of our second shift. So we have a lot of room in Pueblo to accommodate evening leagues, which are only about—evening leagues are only probably about 40 per cent of the total business. But we could accommodate them.

There has been a lot of talk about early towns, late towns. Most of the cities in this country, the

[1825]

early shift is considered more desirable. But one of the things that we find, when there are enough bowlers available to fill a bowling center, then it is possible to get the early shift to start a little earlier.

We do that in many communities where our early leagues—where we have a late league, then the early league agrees to move up to, let's say, 6:00 o'clock, so that the late league can bowl at 8:30.

But taking the competitive situation into account, I feel that we would get at least—at least 90 to 100 thousand dollars out of the closing of Belmont.

There is another factor, too, that I took into consideration, Mr. Hoffmann. I don't know whether it is responsive to your question. But we have always had a problem in Pueblo because of the number of lanes in that small community, with the price of bowling. Our average price in Pueblo has been about 6 cents a game less than our national average.

And if Belmont were closed I think that we would be able to charge at least our average price for the rest of the country.

So I think that 90 to 100 is a conservative figure. Although the last time I think my figure was a little lower. But the last time I didn't have the experience that we since had in Holiday and in Paradise. We are

[1826]

basing this now on experience and what does happen when one of these centers closes.

Q. And then you applied $1,109?

A. Yes.

Q. And just very briefly, how did you come at that calculation?

A. That is based on Pueblo's own figures for the last eight years, for the additional income, net income, that we get for each additional $1,000 of bowling revenue.

Q. Then this is multiplication (indicating).

A. Yes.

Q. It brings it to this yearly figure of $99,810 to $110,900, is that right?

A. Yes.

Q. And that arithmetic, I take it, was carefully checked?

A. Checked and double checked.

Q. And then you multiply—

A. By 9⅝ years and we get the figure in the right-hand column.

Q. You have a final figure of $964,830 to $1,072,030, and then you have the summary. That simply adds them up, does it not?

A. Yes, we added all the lower numbers together,

[1827]

and all the higher numbers together, so it gives us a range from—if you take the lower numbers for all four centers, the total is $3,355,000. And if you take the higher range, it is $3,919,000.

[1828]

Q. Well, there are two ranges, one is lower, the top here; and one is higher, the bottom here.

Do you think that the plaintiff companies have really been damaged in the amounts reflected by the higher range?

A. Based on what has happened—you had asked me three years ago I might not have answered in quite the same way, but based on what has happened in Holiday, and what is happening right now in Paradise, I would have to say yes, I think the higher range applies.

But in the interest of conservatism, I suppose it is proper to give a range, you know, for those lower and higher figures.

• • •

Mr. Hoffmann: I finished my questioning, except for one little detail, which follows the introducing of an exhibit.

Would you please mark this as plaintiff's Exhibit 65 for identification.

[1829]

(Plaintiff's Exhibit 65 marked for identification.)

Q. Mr. Davis, I show you plaintiff's Exhibit 65 for identification and ask you to tell us what it is.

A. This is a chart entitled, "BCOD Centers Operating at a Net Loss," which I prepared.

Q. And what materials did you use in preparing it?

A. This is a summary of a previous exhibit, Mr. Hoffmann.

Q. Would it be—

A. I am not sure of the number.

Q. —47 in evidence?

(Shown to the witness.)

A. Yes, this is the exhibit of which this new sheet is a summary.

Mr. McNeill: What number is that, Mr. Hoffmann, please?

Mr. Hoffmann: 47.

Q. And what does this exhibit purport to show?

A. Well, this is a summary of the number of BCOD centers which operated at a net loss each year from 1965

through 1972. And that is shown as a percentage of the total number of centers that BCOD was operating.

[1830]

And it also shows, from the same source, the percentage of centers that would have been operated at a loss in the hands of independent proprietors.

Q. What is the underlying basis for this exhibit?

A. The records of the Brunswick Corporation, which were furnished to us.

Mr. Hoffmann: I offer it in evidence.

The Court: Any objection?

Mr. McNeill: I do. Just to clarify this last point from Mr. Davis——

Do you have Exhibit 47?

The Witness: I don't have it in my hand.

The Court: Give it to him.

(Exhibit handed to the witness.)

Mr. McNeill: Is it accurate that plaintiff's Exhibit 65 for identification was taken from both the top line that goes across Exhibit 47 and the bottom line from Exhibit 47?

The Witness: Yes.

Mr. McNeill: For each center.

The Witness: Yes.

Mr. McNeill: And isn't it correct that the top line for each of those centers does—as previously testified—come from Brunswick

[1831]

records?

The Witness: Yes, sir.

Mr. McNeill: But the bottom line as to each of those centers does not come from Brunswick records, isn't that correct?

The Witness: Well, in part, yes. The income does. The depreciation and interest does not come from Brunswick's records.

Mr. McNeill: In order to arrive at that second line on Exhibit 47, it was necessary to make use of plaintiff's Exhibit 1A, isn't that correct?

The Witness: That is correct, Mr. McNeill.

Mr. McNeill: Well, your Honor, to that extent, I wanted to clarify that this exhibit 65, while based on Exhibit 47, is only partially based on Brunswick's record, and the rest of it is based on another exhibit in this case. But it requires a hypothetical, and the assumptions, and so forth, which we previously objected to for Exhibit 1A.

Mr. Hoffmann: Your Honor, it is based upon a prior exhibit in evidence, as to which we have——

The Court: Into evidence.

[1832]

(Exhibit P-65 received in evidence.)

By Mr. Hoffmann:

Q. Now, Mr. Davis, just very quickly looking at P-65 in evidence, can you tell from that exhibit how many Brunswick centers were operated in the period of time '65 to '72, for each year?

A. Yes, this is Brunswick centers in the continental United States.

Q. Well, if I may, I will just read them off. You have 127 for '65, 173 for '66; 182, is that for '67?

A. Yes.

Q. 181 for '68; 172 for '69; 173 for '70; 175 for '71; and 179 for '72.

A. There is a typographical error here, Mr. Hoffmann, which is a very obvious one. Instead of typing 1969 at the top, the girl typed 1968 twice. That should be corrected.

Mr. Hoffmann: Mr. McNeill, would you have any objection to changing the second '68 to a '69?

Mr. McNeill: No.

Mr. Hoffmann: Thank you.

Mr. McNeill: Excuse me. Is it also clear that the number of BCOD center—operating

[1833]

figure which is on this exhibit, and which is inconsistent with other exhibits plaintiffs have offered in this case, indicates centers operated at any time during the year, rather than those in operation at the year end?

Mr. Hoffmann: I am not quite sure that I understood your statement. Inconsistent with other exhibits in the case?

Mr. McNeill: Yes. For example, your 49 and 50 talk about the number of centers operated by BCO. And just to take an example, the 1967 figure on Exhibit 50 is 162 centers, whereas the figure on this most recent exhibit says 182.

The Court: What are you saying, that some are only operated for part of the year, six months?

Mr. McNeill: I think that is the explanation. I shouldn't be testifying about it, but I thought it ought to be made clear.

The Court: Not that I am testifying, will you repeat it?

The Witness: When we received from Mr. Hoffmann the statement for each center, they showed a profit or a loss for each center during the year. It is possible that the center may

[1834]

not have been open at the end of the year. For example, they show in Brunswick's Orange Bowl, which is a center that I visited last July, one week before it opened in 1972, they show a profit of $75,000 in 1971.

In preparing this summary, which is Exhibit 47, we recorded the profit or loss for each center in each year that we were supplied a profit or loss statement for that center. So that could explain the discrepancy here and there of one or two places against what was actually open on December 31st of any particular year.

By Mr. Hoffmann:

Q. Mr. Davis, did you also not say that Canada had been subtracted from the list of centers?

A. Yes.

Q. Now, then, Mr. Davis, I simply ask you, what does this show, in terms of numbers of bowling centers, of BCOD operating at a loss from 1965 on; are there still centers of BCOD carried at a loss?

A. Even according to the way the BCOD takes its depreciation and no interest, there were still 25 centers in 1972 operating at a loss.

And throughout most of the period there were about half the centers, or more, operating at a loss.

• • •

[1835]

CROSS-EXAMINATION.

By Mr. McNeill:

Q. Mr. Davis, there has been some testimony about the bowling business in general being better from a proprietor's standpoint during the last couple of years—in fact, I think you used the word, "upswing"—is that accurate?

A. Yes.

[1836]

Q. And has Treadway, in its various operating companies, enjoyed the same upswing in bowling income over the last couple of years?

A. Generally we have, yes.

Q. And what about Treadway's profits on its bowling operations in the last couple of years, have they increased?

A. Yes, they have.

• • •

Q. Thinking of Treadway in its entire capacity as operating several businesses, including bowling, isn't it accurate that the 1971 net income after taxes was

[1837]

some $402,000, and in 1972 for your fiscal year it was $596,000, or an increase of 48 per cent?

A. You are talking about the whole company, including our food division and our motels.

Q. Yes, sir.

A. Yes, that's true.

Q. And were the bowling profits a significant part of the net income enjoyed by Treadway?

A. They weren't the Number 1 part, but there was an improvement in the bowling division.

Q. Is it also true, Mr. Davis, that the long-term debt that Treadway has had over the years, with respect to its bowling equipment, has essentially been paid off, and that the bowling equipment in the various Treadway centers, is now essentially free and clear?

A. I believe that's true, yes.

Q. And have the bowling operations of Treadway been able to generate a substantial amount of cash flow the last couple of years?

A. A substantial amount of cash flow?

Q. In the hundreds of thousands of dollars.

A. Yes, I would say it is several hundred thousand dollars.

Q. In making the various estimates with respect to the amount of additional profits or business that

[1838]

certain Treadway centers would have enjoyed if other centers in the area had closed down, you talked about your experience with respect to additional income in at least San Juan and in Wappingers Falls, did you not?

A. Yes, sir.

Q. And the experience figures you made use of were the 1972 profits enjoyed by Treadway, were they not?

A. Only in part. I also referred to the 1973, current year.

Q. I stand corrected. In other words, you made reference to the profits enjoyed after the general upswing in the bowling business?

A. The upswing didn't start in 1973. It began gradually in 1971 and '72, that is correct.

Q. You took advantage of the upswing at its uppermost limits to this date, didn't you?

• • •

A. It is a hard question to answer yes or no. Some

[1839]

of our centers have gone up and some have gone down. And in spite of the fact that the overall trend in the country may be up, we have centers that have gone up and centers that have gone down during this period.

Q. What about the four centers—Holiday, Paradise, Paramus and Pueblo Bowl-O-Mat—they have gone up, haven't they, in '72 and in '73?

A. Yes, I would say they have.

Q. Yes. And you made use of those calculations in your testimony a few minutes ago, the recent profits?

A. In the case of Holiday, I indicated that I attributed two-thirds of the increase to the closing of Dutchess.

Q. Yes, the increase after the upswing in bowling that you testified about.

A. Yes.

Q. Then you have spread that back over, have you not, over a period as long as 9⅔ years, in the case of Pueblo, isn't that accurate, according to Plaintiff's Exhibit 53?

A. That is correct, sir.

Q. I see.

Mr. Davis, with respect to Exhibit 53, this so-called damages to four of plaintiff's centers, first of all, wouldn't it be more accurate to say claimed damages

[1840]

to four of plaintiff's centers?

A. More accurate, Mr. McNeill?

Q. Yes, sir.

A. We feel very sincerely these are our damages. That's the heart of our case, I would assume.

Q. Those are being claimed in this litigation?

A. These are our claimed damages, yes.

Q. Would it be more accurate to add to the caption there, "Additional annual bowling revenues if centers in each of these market areas had been closed, the equipment pulled out, and no other operator had entered the market area"?

A. Well, in part, that would be true. That would be true in Holiday—that happened. In Paradise that happened.

It wouldn't be true in Paramus, because the four competing centers do a total of nine hundred and some thirty thousand dollars, so it wouldn't require all four of those to be closed down for us to pick up $120,000. It wouldn't be true in Paramus.

In Pueblo, I would say yes, it would have to be true, of course. If Belmont stayed open, we would get some, but we wouldn't get as much, obviously, as if it closed. The assumption is that these centers would have fallen of their own economic weight if Brunswick didn't

[1841]

prop them up.

So that could be added to the caption, Mr. McNeill, you are correct.

Q. That is the hypothesis here, these would be estimated additional annual bowling revenues if, indeed, Brunswick had closed, repossessed the equipment operated in those centers, pulled it out—

A. Except in Paramus.

Q. Well, let's go back to Paramus for a moment, sir. I understood your testimony to be that those were estimated additional bowling revenues that would accrue to

Paramus Bowl-O-Mat if Lodi, Ten Pins, Fair Lawn and Interstate had been closed and no one were operating there.

A. Well, yes. But I have to qualify it, Mr. McNeill, in all fairness. Ten Pins on the Mall, which is half a mile away, is presently doing $170,000 in bowling. It is very obvious to anybody that knows the market, if Ten Pins alone were to close, at least two-thirds of that would go a half mile down the road into our center.

So it is a combination. It is true, what you say, that we are talking about all four of these centers being operated by Brunswick, where they would have failed in the hands of individual proprietors. But I suppose you could qualify that and say if the centers

[1842]

were closed, yes. You could change that first line.

Q. If, indeed, someone else had been operating Belmont, for example, from August 1, 1963, thorugh last Sunday, April 1, 1973, then there wouldn't be any such estimate and the hypothesis for this exhibit would disappear, would it not?

A. It would be different if somebody else were operating Belmont. I don't suppose they would have A-2's, for example. It partly relates to the center being kept open by Brunswick and partly it relates to how Brunswick has operated the center. There are two parts to the question. It is a very complicated thing when you are trying to give simple answers. I am trying to do my best.

Q. I am just trying to find out whether it is accurate that the whole hypothesis of this exhibit is that such additional bowling revenue would come to the plaintiff centers if, indeed, during the dates indicated—if Brunswick-operated centers or, in the case of Paradise, Star Bowl—had

been closed down, the equipment pulled out, and no one had been there to replace it.

A. Well, our case, I suppose, is based on the fact that if Brunswick hadn't taken them over, that would have happened, yes. If Brunswick hadn't taken over

[1843]

Belmont, it would have closed in 1964.

Q. Well, that is the hypothesis.

A. Yes, I would say that's right.

Q. Now, your recent experience in San Juan, Puerto Rico, in operating Paradise Bowl-O-Mat, has resulted, you have testified, in a net profit of a hundred thousand dollars, I believe.

[1844]

A. That's our forecast for the current '72-'73 fiscal year, based on the first six months already in.

Q. And is your forecast for the succeeding fiscal year even greater profits than 100,000 for the year?

A. It will be, based on the additional league business, yes.

Q. And how many centers are competing with Paradise at this time in San Juan?

A. I believe there is only a small military installation, but there are no other commercial centers in San Juan. It is the last one left.

Q. Paradise Bowl-O-Mat is the only center operating in San Juan at the moment, commercially.

A. That is correct.

Q. Now, has it been your experience in the bowling business that when investors learn that the only centers—center—operating in a market are making profits in excess of $100,000 per year, that that might be a good market to open a bowling center?

A. Not sophisticated investors in 1973. If you want to go back to '60 and '61, that happened, it surely did.

But that wouldn't happen with a sophisticated investor in 1973, because he could figure out very

[1845]

easily, if we are doing X amount of business, $250,000, let's say, in an area like San Juan, that if he opened up a center, with the investment that would be involved, and divided that business with us, then we would both become losers again.

Q. Don't you ever develop any new business when you have a center——

A. We work very hard at it, but you should try in San Juan, Puerto Rico. It is not easy, sir; very difficult. It is a very difficult market to operate in.

Q. Does Treadway——

A. I might also add that a sophisticated investor could also, when he checked around, find out how many centers there were at one time in San Juan that have closed.

To the best of my knowledge, it is five. And we are the last of five or six centers.

Q. Mr. Davis, does Paradise Bowl-O-Mat, or Treadway, possess now the power to exclude any other operators from opening a center in San Juan?

A. No, sir; we do not.

Q. Even though you are the only operator in the city?

A. We don't have the power to preclude anybody

[1846]

from going in there, no.

Judgment would preclude it, but we don't have the power.

Q. Any investor who wanted to risk the money, wanted to buy used equipment, at the best possible prices,

could find a place to open a center, could indeed tomorrow, or today, open a center in San Juan.

Mr. Hoffmann: Is there a question?

Mr. McNeill: Yes, I put the question:

"Question: Isn't that accurate?

A. It would be a very large investment, but it's accurate.

Q. You testified a moment ago about a center in Rahway, New Jersey.

A. Yes, sir.

Q. And indicated that there were some signs indicating Brunswick management of that center?

A. Yes, sir.

Q. Are you familiar with the arrangements between Brunswick and the owner of that bowling center?

A. To a certain degree, yes.

Q. Do you know that Brunswick is managing that center for someone else?

A. That is not the understanding that I have of their arrangement. And if that is the case, why is

[1847]

it shown as an operating statistic, with income and expense, like any of the other Brunswick operated centers?

When we received the statistics from your company they indicated, in a separate group, some managed properties for which Brunswick was only receiving a management fee. They were not included in this analysis. This analysis is based on figures where you show income, and expense, and profit, or loss.

[1848]

Q. I ask you again, have you seen the papers reflecting the understanding?

A. I have not seen the documents relating to Rahway, except the operating profit and loss statement from Brunswick Corporation.

Mr. Hoffmann: May we see your Honor at side bar?

(Counsel approached side bar and the following proceedings were had without the hearing of the jury:)

Mr. Hoffmann: Do I have a right to expect that he will produce this contract or show that the situation is as his questions suggest?

The Court: Or at least testimony concerning the document.

Mr. McNeill: I don't know what purpose Mr. Hoffmann had in bringing this testimony forth from the witness, he walked into a center and saw that it had AMF equipment and signs that Brunswick operated it.

The Court: I don't know Mr. Hoffmann's purpose.

Mr. Hoffmann: To show in addition to building new centers that it operates it has even acquired or——

[1849]

The Court: AMF equipped centers?

Mr. Hoffmann: And operates those to make a profit. It shows both its feet are flatly placed in the bowling operating business.

Mr. McNeill: I will be glad to try to find a copy of whatever understanding there is. I just wanted to find out whether Mr. Davis——

The Court: I think in all fairness to these plaintiffs, when you ask a question like that, I am not concerned primarily with the production of documents, but perhaps some statement or record which can be furnished that it was Brunswick managed, if that is the proper bowling center term.

Mr. McNeill: Perhaps we can straighten this out during the luncheon recess.

Mr. Hoffmann: The way the record is now, it looks as if Mr. McNeill in the form of a question has testified differently from the witness. He has suggested——

The Court: Do you know whether it was Brunswick managed instead of Brunswick operated?

Mr. McNeill: He didn't know one way or the other.

The Court: See if you can unravel it.

[1850]

I will let it remain for the time being.

(Counsel return from side bar, and the following proceedings were had within the hearing and presence of the jury:)

Q. Mr. Davis, you testified that you and various associates operated several bowling centers and I believe they were in areas outside of the areas where plaintiffs are operating centers; isn't that accurate?

A. Yes.

Q. I have reference to Freeport out on Long Island.

A. Yes.

Q. There was a center up in Massachusetts called West Boyleston?

A. Yes.

Q. And another one in Massachusetts, in Framingham, and one in Queens, and one in Brooklyn, I believe.

Did any of those centers contain Brunswick equipment?

A. No.

Q. You are familiar, are you not, with plaintiff's Exhibit 1 in this case?

A. Yes.

Q. Showing the various payments and charges

[1851]

with respect to customers of Brunswick equipment. Does that exhibit have any application to any of the centers operated by you?

A. Yes, it does.

Q. How so?

Maybe we should have a copy of the exhibit in front of you?

Mr. Hoffmann: Would you like me to turn this back, Mr. McNeill?

Mr. McNeill: I beg your pardon?

A. Yes, this exhibit shows——

The Court: Wait a minute.

Q. You have plaintiff's exhibit 1 in your hands, do you not?

A. Yes.

[1852]

Q. And can you explain how that exhibit applies in the situation where you were operating Freeport Bowl with AMF equipment or West Boyleston, Massachusetts, while that was in operation, with AMF equipment?

A. Yes. This exhibit shows, and it separates the pinsetter and the lane, and it shows that a proprietor, an individual proprietor, has an expense for depreciation of $1,000 per lane per year, and an expense for interest of $320 per year, so that he has an expense for the purpose of his profit and loss statement of a little over $1300 a year.

And it also shows that he has a cash need of $2,000 per lane per year. As an AMF proprietor I had approximately those same expenses, a little higher on the profit—on the expense figure, my expenses were a little higher because the AMF machine rental was a little higher than the depreciation and interest had I bought a Brunswick pinsetter, and the cash need if I did—the cash need comes out on the pinsetter, $1168 a year, if I did 12,000 lines in Freeport, I testified I did 14 at one time, and I paid AMF 10 cents a line, I was paying more than $1,168, so that I was in a little worse position than a Brunswick proprietor.

Q. What were you paying AMF?

A. Machine rentals.

[1853]

Q. According to your schedule?

A. Yes.

Q. At all times for all of those centers?

A. We paid at all times when we could.

We had difficulty meeting those payments, and sometimes we had to go to AMF and say, "We can't pay you the 40,000, we can only pay you 30, and they'd take that $10,000 difference and they'd add it on to our debt with interest.

This was the problem in the early '60's. We were all struggling to meet those payments, and the AMF proprietors were struggling just as much as the Brunswick proprietors.

Q. The point is that your actual experience was considerably less than what you testified about a second ago.

A. No.

Mr. Hoffmann: Just to the contrary.

The Court: I will sustain that.

The Witness: Why was it less?

The Court: Don't you ask the questions.

The Witness: I'm sorry, sir.

The Court: You're not a lawyer, are you?

The Witness: No, sir.

Q. You testified that there were several instances

[1854]

for the centers you were operating where you went to AMF and obtained extension arrangements, your example was $40,000 was due, $30,000 was paid, and that $10,000 was put on for later payment; is that accurate?

A. We were able to obtain an extension, but it became—it was very hard to do, they were that much more lenient in extending notes than machine——

Q. With respect to the lanes, you were also able to obtain favorable extensions or moratoriums, making your actual cash payments per year somewhat less than you just testified about?

A. We paid them every penny we could, and to the extent we could, either they gave us mercy or eventually they closed us down, and eventually they closed us down in West Boyleston, because we couldn't make the payments.

Mr. McNeill: May I suggest a luncheon recess?

(Luncheon recess.)

* * *

[1869]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. On the subject of turkeys, Mr. Davis, tell me, is the use of turkeys the competitive act of Brunswick which you and the other plaintiffs are complaining about?

A. No, sir.

Q. You don't care too much how many turkeys they give away at Christmas or Thanksgiving, do you? If they are just turkeys?

The Court: As long as he doesn't have to pay for them. Right?

A. Not really. I mean there is a difference in inducements, Mr. Hoffmann, if I may say so. There is a host-guest relationship between a bowling center and its leagues.

And the things that a proprietor may do with his leagues that he developed, and has had for many years, is a way of "thank you," and the things that a proprietor might do to induce a league to move from

[1870]

another center are really poles apart.

But turkeys have never been a big problem, as far as I know, with the Brunswick operating division.

Q. The turkeys are not significant to you as a competitive problem as, say, lower price?

A. Lower prices are much more important.

Q. Or trips to Europe, they are more important than turkeys, aren't they?

A. Yes, sir.

Q. That's the kind of practice you have been complaining about.

A. Prices, particularly, yes.

Q. Now, sir, Mr. McNeill asked you whether or not you had any reason to sue AMF, for example, in connection with West Boyleston Bowl. And I ask you the same question. Did AMF give you any reason to sue it under the antitrust laws?

A. They never operated centers in competition with me, if that is what you are referring to, Mr. Hoffmann.

No, I don't think they ever gave us any reason to sue them.

Q. You say they didn't operate centers in competition with you.

A. No, sir.

Q. Do you know whether they operated centers

[1871]

in competition with anyone else?

A. I know that they had a division briefly called Bowl-Op where they may have taken over a failing center, operated it for a few months, and then resold it to a proprietor.

I know they did that. I know of some centers that were resold, and during an interim period, for perhaps a year or less, AMF may have operated it through their Bowl-Op Division.

But they have not——

Q. Do you know of any situations in which AMF carried losing centers for a period of years, operated them?

A. I know of no instances.

Q. Do you know of any policy AMF may have had in respect to this matter?

A. Well, yes, their policy was that they would not go into the operating business in competition with independent proprietors.

• • •

[2064]

Mr. Hoffmann: But, if your Honor please, I would then ask only, among the plaintiffs, other than the four, only ask for money recovery for Indianapolis; as to the others—that is to say, as to Minneapolis, as to Skor, as to Muncie, as to Saginaw, as to Des Moines, indeed, as to Indianapolis, as well—we have them in the case, because we want injunctive relief for them later on.

I didn't argue injunctive relief the other day, because I thought it was premature to do that.

The Court: I agree.

Mr. Hoffmann: But in respect of their surviving in the complaint——

The Court: As to damages.

Mr. Hoffmann: As to damages, the only claim

[2065]

made for those individual centers is for Indianapolis, in relation to the $14,089 loan. But I hope they survive in the case for other purposes.

The Court: We will cross that bridge when we come to it.

• • •

[2066]

The Court: Defendant Brunswick has moved to strike Exhibits 1, 1A, 47, 48, 49, 50 and 65 on the grounds that the exhibits possess certain crucial inaccuracies which render them highly prejudicial and therefore inadmissible.

The Court has seriously considered all of the defendant's arguments as to why these exhibits are mis-

leading. Even if these arguments were true, however, this Court does not deem these exhibits to be "so extremely speculative and conjectural as to furnish no sound basis for the amounts allowed." *Emich Motors Corp. v. General Motors Corp.*, 181 F. 2d 70, 84 (Seventh Circuit 1950), *reversed on other grounds*, 340 U. S. 558 (1951).

It is almost inevitable in a case such as this and that the parties will argue over accounting methods and exhibit formulation. In the instant case, however, the Court has not been persuaded that the inaccuracies in the plaintiff's exhibits, assuming they exist, render these exhibits inadmissible. *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U. S. 359 (1927); *Bigelow v. R. K. O. Pictures*, 327 U. S. 251 (1946). The motion to strike is, therefore, denied.

The Court has before it defendant Brunswick's

[2067]

motion for a directed verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure as to all the claims made by the plaintiffs.

The standard by which this Court is to be guided in deciding a motion for a directed verdict pursuant to Rule 50 is that the motion can only be granted where "there can be but one reasonable conclusion as to the verdict." *Brady v. Southern Railway Co.*, 320 U. S. 47, 479-480 (1943).

The party against whom the motion is made is entitled to have all the evidence and testimony viewed in a light most favorable to him; he is entitled to all the reasonable inferences that could be drawn from the evidence. *Paletsky v. Farrell*, 54 F. R. D. 467 (Third Circuit 1972); *Gizzi v. Texaco, Inc.*, 437 F. 2d 308 (Third Circuit 1971).

Guided by these principles, the Court will consider the various arguments advanced by defendant's counsel as to why a verdict should now be directed in this case in its favor.

The first of these is that the plaintiffs have failed to set forth any proof that the defendant's acquisition with respect to Dutchess

[2068]

Lanes, Poughkeepsie–Wappingers Falls area; Fair Lawn and Interstate Lanes, Bergen County, New Jersey; and Belmont Lanes, Pueblo, Colorado, involved the necessary element of interstate commerce under Section 7 of the Clayton Act.

The defendant relies on *Lieberthal v. North Country Lanes*, 332 Fed. 2d 269 (Second Circuit 1964) and the cases cited therein or decided under Sections 1 and 2 of the Sherman Act. This case in this C[illegible]rt's opinion is distinguishable from the present one. In the present case the amount of interstate activity testified to is greater than that alleged in Lieberthal supra. In the present case there was testimony of purchase and sale of pinsetters, lanes, bowlers' supplies, and financial transactions, all in interstate commerce. Although the defendants conceded that the operation of bowling establishments directly and substantially affects interstate commerce, the Court concluded that the operations of bowling centers affected interstate commerce in *Bowl America, Inc. v. Fair Lanes, Inc.*, 299 F. Supp. 1080 (D. Ind. 1969).

Perhaps the activity itself–bowling might be of an intrastate character–and the centers

[2069]

themselves are localized. The language of Lieberthal supra on page 272 is pertinent.

"But the test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the conduct complained of affects the interstate commerce of such business" quoting *Page v. Work*, 290 Fed. 2d, 323 (1961) Ninth Circuit.

In view of the above the motion for a directed verdict in favor of the defendant and against the plaintiffs Holiday, Paramus and Pueblo on the third claim of the complaint on the grounds that interstate commerce has not been proven, is denied.

The second contention raised by the defendant is that the acquired companies were in a failing condition and that there has been no violation of Section 7 of the Clayton Act for that reason.

The "failing company" doctrine, however, is a very limited one. One asserting the doctrine successfully must establish not only that the company is irreversibly failing but that the acquisition in question was the sole alternative

[2070]

available. *United States v. Greater Buffalo Press, Inc.*, 402 U. S. 549 (1971).

The plaintiffs' proofs have not established that Brunswick's actions were the only alternative open to these companies. With the case in such a posture, then, the existence of the failing company defense is certainly a question over which reasonable men could differ. A verdict cannot, therefore, be directed on that basis.

The Court now moves to the question of monopolization and attempted monopolization. Perhaps it would be most expeditious to first determine what this case does not concern. It is not a case of a large corporation consuming its competitors on the same level of commerce. Percentage of the market, however infirm an indicator that might be, has a very limited application in this case. What the claims of the plaintiffs do involve is the charge that a powerful manufacturer has reached down vertically to attempt to control the retail market. The asserted source of the monopoly power then is not control of a large portion of the market, but control of the goods and services which the retail market requires.

[2071]

Thus, cases such as *United States v. United States Steel Corporation*, 251 U. S. 417 (1920) or *United States v. Grinnell Corp.*, 384 U. S. 563 (1966) have very little to do with the instant matter. The question involved herein is more akin to the situations in *Reynolds Metals Co. v. F. T. C.*, 309 Fed. 2d 223 (D. C. Circuit 1962) and *Sanitary Milk Producers v. Bergjans Farm Dairy, Inc.*, 368 Fed. 2d 679 (Eighth Circuit 1966) in that Brunswick, a manufacturer of the "raw materials" of the bowling business has entered the retail market.

In this Court's view this jury could reasonably conclude that Brunswick possesses monopoly power and that it employed this power, proximately damaging the plaintiffs. The existence of this question over which reasonable men can differ is sufficient to defeat the instant motion.

The foregoing discussion disposes of the defendant's arguments as to Paradise, Holiday, Paramus,

Pueblo and Fort Lauderdale and further disposes of the argument as to damages flowing from mere existence rather than predatory practices.

Furthermore, there has been a showing of

[2072]

possible advantages inuring to the centers acquired by Brunswick which the jury might conclude to be a manifestation of monopoly power.

The Court now moves its consideration to the claims of Saginaw, Muncie (Detroit), Skor, Minneapolis, and the parent company, Treadway, Inc.

The theory upon which the individual companies seek recovery is that they were forced to subsidize the "victimized" companies because of Brunswick's activities. The only damage they suffered which is not already directly claimed, however, was the sum of $41,000 in interest expense caused by Brunswick's refusal to extend credit at a continuing rate. Treadway, the parent company, is in the case to collect the damages, if any, for the now defunct Fort Lauderdale Lanes.

The computation of the aforementioned sum of $41,000, however, includes only the added expense with respect to two loans—one on the Indiana National Bank of Indianapolis incurred by Indianapolis Bowl-O-Mat in the amount of 175,000 creating an alleged added expense of $14,089, and the other on the Franklin National Bank incurred by the parent company, Bowl-O-Mat—now Treadway—in the

[2073]

amount of 975,000, creating an alleged added expense of $27,031.65.

It may be that the member bowling companies suffered a derivative loss as a result of the added expense to Treadway, but, other than the chart as to Indianapolis, there is no proof of that before this Court.

In this Court's opinion "there can be but one reasonable conclusion as to the verdict" respecting Saginaw, Muncie, Detroit Skor, Minneapolis, and Des Moines—and that is a verdict for the defendant. The Court therefore grants defendant's motion for a directed verdict with respect to, perhaps repetitiously, Saginaw, Muncie, Detroit Skor, Minneapolis and Des Moines, which leaves Indianapolis Bowl-O-Mat in addition to Treadway, Holiday, Paramus, Paradise and Pueblo.

I will pass upon the requested issues later on in this proceeding as requested by the attorney for defendant.

[2102]

• • •

JOHN A. BARRON, called as a witness on behalf of the defendant, having been duly sworn, testified as follows.

DIRECT EXAMINATION.

By Mr. Seeley:

Q. Where do you live, Mr. Barron?

A. Lake Forest, Illinois.

Q. What is your occupation?

A. I am an accountant with Brunswick Corporation, and assistant comptroller, director of operations control.

Q. Please state when you came to work for Brunswick Corporation, and identify each position which you have held with that corporation from that time until the present.

A. I joined Brunswick in 1952 as a senior accountant. In 1956 I was named chief accountant of the Brunswick Murray Automatic Pinsetter Corporation, which was a joint venture company between Brunswick and the Murray Corporation of America.

I served in that capacity until January 1962, when that corporation, which in the interim was fully acquired by Brunswick, was merged into Brunswick Corporation. In January 1962, I was appointed as as-

[2103]

sistant comptroller of the Bowling Division. In January 1963 I was appointed comptroller of the Installment Credit Division, which was a unit organized to handle the special long-term bowling equipment receivables.

Q. When you hear a plane passing overhead, you will have to raise your voice and try to talk above it, Mr. Barron.

A. All right.

I served as comptroller of the Installment Credit Division until December 1965, when I was appointed comptroller of the Bowling Division. And in 1967, when bowling and the bowling center operations divisions were merged, I continued as comptroller of the combined group.

And in August of 1972, I was appointed assistant comptroller of the corporation.

Q. Are you familiar with the accounting records and practices of the various aspects of Brunswick's bowling business including the manufacture and sale of automatic pinsetters and the operation of bowling centers by BCOD?

A. Yes.

Q. As comptroller of the Brunswick Division, or, rather, at the present time as director of opera-

[2104]

tions control of Brunswick, do you have under your control records which reflect Brunswick's sales of new pinsetters by years?

A. In the various capacities I served, I had those records under my direct control. And in my present capacity, as director of operations control, I have access to all books and records of the corporation.

Q. Do the records to which you have access, and which were under your control, show sales of used pinsetters?

A. Yes, sir.

Q. For what period?

A. For the years 1963 through 1972 we have complete detailed records. There were some sales prior to '63, but I don't have the details on those.

Q. Do you also have access to, and did you formerly have under your control, records of Brunswick which show the number of pinsetters which it has repossessed, by years?

A. Yes, sir.

Q. For what period do you have such records?

A. Here, again, on repossession I have detailed records from 1963 through 1972. We have some published reports of Brunswick, which we use with our banks, to show 1962 repossessions, and an estimate of

[2105]

1961.

Q. Keep your voice up so that the people in the jury don't have to strain to hear you, please. Was there a time when bowling equipment which Brunswick repossessed usually was resold immediately to another purchaser?

Mr. Hoffmann: I object to the question as leading, your Honor.

The Court: I will permit it. Answer the question.

A. Yes, sir; all of the equipment which was repossessed between the years 1956 and 1961 was generally resold almost immediately. There were people waiting to buy this equipment at some reduced prices.

In 1962 this was still pretty generally the case, but it started to slow down a little bit. We had some inventory of used equipment at the end of 1962. But we still had orders for all of those units.

However, in 1963, there was a drastic slowdown between the rate of repossessions and the rate of resales. We were not able to sell everything that we repossessed in 1963 and subsequent.

[2106]

Q. Do your records also show for each year beginning with 1963 the principal balances outstanding and unpaid on the installment purchase contract notes given to Brunswick by customers whose bowling equipment was repossessed in each of such years?

A. Yes, sir.

Q. Do your records also show for each of the years 1965 through 1972 the number of repossessed pinsetters which were turned over to BCOD for operation in bowling centers?

A. Yes, sir.

Q. Do your records also show for each such year the outstanding and unpaid principal balances on the installment purchase contract notes given by the customers whose bowling equipment after repossession was turned over to BCOD for operation?

The Witness: I didn't get the first part.

The Court: Repeat the question.

(Pending question read.)

A. Yes, there are records in the corporation for those amounts. Yes.

Q. Do you also have records which show, for each year from 1965 through 1972, the number of bowling centers taken over for operation by BCO, the number of such centers which were taken out of

[2107]

operation, sold or otherwise disposed of by BCO, and the number of centers operated by BCO at the end of such year?

A. Yes, sir.

• • •

Q. Does Brunswick also have records which show the same thing with respect to the number of lanes of bowling equipment turned over to BCO for operation in its centers?

A. Yes, sir.

Q. Do the records under your control, and to which you have access, show a profit or loss figure for each bowling center operated by BCO, and an average profit or loss figure for all of such centers, by years from 1965 through 1972?

[2108]

A. Yes. Well, we don't have an average for each center. That could be calculated readily. But we have detailed records for each center.

Q. I read it wrong. Aggregate was the word I meant to include in my question.

A. The total of all, yes.

• • •

Q. Do you also have under your control records which show a profit or loss figure for each bowling center operated by BCO and an aggregate profit or loss figure for all of such centers by years from 1965 through 1972?

A. Yes, sir.

Q. Does Brunswick maintain its accounts with respect to the operation of its BCO centers so that depreciation is charged to each center each year in determining the profit or loss of the center?

A. Yes, sir.

Q. And do the records under your control

[2109]

reflect the cash flow before charging depreciation of each BCO center, and all of them in the aggregate, for each of the years 1965 through 1972?

A. Yes, they do.

Q. Do the records under your control show the total unpaid balances owed to Brunswick on installment purchase contract notes arising from the sale of bowling equipment as of the last day of each year beginning in 1964?

A. Yes, sir.

Q. Now, do those figures, as of the end of each year, include any amount for bowling equipment notes on equipment which was repossessed during that year?

A. No, sir; at the time an account is repossessed the balances owed are removed from the receivables.

Q. And do the records under your control also show the number of installment purchase contract accounts represented by those balances?

A. Yes.

Q. Do the records under your control also show, with respect to such installment purchase contract accounts and balances, the number of accounts on which payments to

Brunswick were delinquent for more than 90 days, and the unpaid balances of such accounts at

[2110]

the end of each year?

A. Yes, they do.

Mr. Seeley: Will you mark this, please, Defendant's Exhibit 1 for identification.

(Exhibit D-1 marked for identification.)

Q. Mr. Barron, I hand you now a document which has been marked for identification Brunswick Exhibit 1. It bears the caption "Brunswick Corporation Summary of Pinsetter Sales, New, and Repossessions of Pinsetters in Units."

Have you examined that document before taking the stand and caused the figures which appear on it to be checked for accuracy against the Brunswick records which you have testified are under your control or to which you have access?

A. Yes, I have.

Q. And have you brought with you to the courtroom either the basic Brunswick records from which the figures are on Brunswick Exhibit 1 for identification were taken, or a summary of such basic records, which was prepared and kept by Brunswick in the usual course of business, together with any working papers which you used to derive from such records the figures which appear on the exhibit?

A. Yes, I have.

[2111]

Q. Brunswick Exhibit 1 for identification will be the first of several tabular exhibits about which I am going to ask you. You have examined each of them before taking the stand. To avoid repetitious questioning, I ask you if it

is true of each of such exhibits, as you have stated it is true of Brunswick Exhibit 1 for identification, that you have caused the figures on the exhibits to be checked for accuracy against Brunswick records, which you have testified are under your control or to which you have access, and that you have found that they correctly reflect the figures contained on such records?

A. Yes, sir.

Q. Is it also true of each such exhibit, as you have testified, that it is as to Brunswick Exhibit 1 for identification, that you have brought with you either the basic records, or summaries prepared and kept by Brunswick in the usual course of business, together with any working papers used to derive from such records the figures which appear on the respective exhibits?

A. Yes.

Q. Going back to Brunswick Exhibit 1 for identification, please tell the jury in a very general way what it purports to show.

[2112]

A. Well, this is a schedule that shows, for the years 1956 through 1972, the numbers of new pinsetters which were sold in each of those years.

Q. By Brunswick?

A. By Brunswick. And in another column it shows the numbers of pinsetters which were repossessed by Brunswick for the years 1961 through 1972.

Q. Why are there no figures for pinsetters repossessed before 1961?

A. As I mentioned earlier, there were some repossessions, but they were generally sold very quickly, and the company did not keep detailed records on such transactions. They were very few and very seldom.

Mr. Seeley: I offer D-1 in evidence.

Mr. Hoffmann: I would like the opportunity to conduct a voir dire.

The Court: I will permit it.

VOIR DIRE EXAMINATION.

* * *

By Mr. Hoffmann:

[2129]

Q. Now, come down, let your eye go down a page with me, if you will, Brunswick Exhibit No. 1, there is a marked drop off of sales, is there not, between 1964 and '65?

A. Yes.

Q. Goes down from 1441 to 659?

A. Yes.

Q. Again in 1966 down to 244?

A. Yes.

Q. Does these sales of pinsetters which you have on this list reflect all of Brunswick's sales of pinsetters?

A. All of Brunswick's sales of new pinsetters.

Q. Including sales to foreign countries?

A. No, sir, these are domestic sales only, United States.

Q. Now, sir, would we have any way of knowing from this chart whether or not these repossessions referred to in the repossession column were sold?

A. From this chart it is not indicated, no.

Q. And that's the chart that summarizes, is that your testimony, in answer to a question of Mr. Seeley's, "We have books and records on the resale of used equipment"?

[2130]

A. Yes.

Q. As to the sales of used equipment, do the records show sales of repossessed pinsetters to Japan, Europe, Canada and the like?

A. There are records that would indicate how many of those units were sold.

Q. Do the charts which you propose to offer here show that?

A. Which I propose to offer? All of the charts which have been prepared for this case relate only to domestic United States.

Q. So then if Brunswick repossessed a pinsetter machine and sold it in Japan, for all that we know here in the courtroom, that was the total loss; is that it?

A. As far as I know, there were no repossessed pinsetters sold in Japan.

Q. Do you know if there were any sold anywhere in the world besides the United States?

A. There were some sold in Canada, some in Latin America.

Q. Anywhere else?

A. Latin America.

Q. Is there any indication of that on your chart?

[2131]

A. No, sir, the charts that we prepared are strictly on the United States operation.

• • •

[2132]

Q. Now, if they are repossessed, what happens to the repossessed machines, do you know?

A. Some are manufactured and resold, some are operated by bowling center operations, some are scrapped.

Q. Is that your purpose to tell us anything about that when you put the new machines together with the repossessed old; is that right?

A. The purpose is to show the trend in the bowling business in the terms of sales, in the terms of repossession.

[2133]

The Court: You didn't attempt to disclose any resale of used——

The Witness: No, no attempt at all.

• • •

[2150]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Now, Mr. Barron, do you have D-1 before you?

[2151]

A. Yes, sir.

Q. Will you kindly state what it shows in more detail, taking first the sales of new pinsetters, year by year, and stating what they are, and then the repossessions, year by year?

A. Well, this shows that in 1956 we had sales of new automatic pinsetters of 1,890 units.

• • •

A. In 1957 the sales units increased to 7,041. In 1958 there was an increase again to 10,528 units. In

[2152]

1959 it was 12,876. In 1960 it continued to increase, 15,232. 1961 is 16,288. In 1962 there is a decline to 7,518

units. In 1963 a further decline to 2,978 units. They continued to decline, and I will read them off.

In 1964, 1,441; 1965, 659; 1966, 244; 1967, 295; 1968, 112; 1969, 118; 1970, 173; 1971, 72 units. In 1972 an increase to 1,048 units.

Repossessions?

Q. Repossessions, please.

A. Starting with 1961, there were 300 units repossessed; 1962, 1,462 units; 1963, 3,354 units; 1964, 4,592 units; 1965, 5,996 units; 1966, 3,658 units; 1967, 1,688; 1968, 716; 1969, 783; 1970, 290; 1971, 116; and finally 50 units in 1972.

• • •

[2164]

Q. Mr. Barron, I show you a sheet of paper marked for identification D-3 and captioned "Brunswick Corporation Used pinsetter sales, number of units by year."

[2165]

Was that prepared, sir, under your direction?

A. Yes.

Q. And from what records was it prepared?

A. This was prepared from records kept in the usual course of business in the accounting functions of Brunswick Corporation.

Mr. Seeley: I offer D-3 in evidence.

The Court: Show it to your adversary.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

• • •

Q. What is the purpose of this exhibit, Mr. Barron; what is it designed to show?

A. This is designed to show the number of units of used automatic pinsetters which were sold in each year starting with the year 1961 and proceeding to the year 1972.

• • •

[2166]

Q. And when you sold a used pinsetter, that developed some income, did it not, for the Brunswick company, the sale itself?

A. Yes.

Q. All right. Do these sales which are found on Brunswick's 3 reflect all of the used pinsetters sold in the particular years given, that is to say, in the years 1961 to 1972?

A. It is all of the pinsetters which were sold in the United States market in those areas.

Q. Why in the United States market, sir, if this is designed to reflect that was sold; what's the reason for taking out other countries in the world?

A. There was no reason to take out. The reason was to show what took place in the United States.

Q. I thought you said a moment ago it was to show the sales of used pinsetters and the income developed from such sales; isn't that right?

A. It was designed to show the number of units

[2167]

which were sold in the United States.

Q. May I ask you again, what is the reason for leaving out the sales in other places such as Latin America, Central America, Europe and Canada; why did you leave that out?

A. Because they are not a part of the United States.

Q. Is that the sole reason, because they are not part of the United States?

A. Yes.

• • •

[2170]

Mr. Seeley: I ask that this be marked, chart entitled "Brunswick Corporation, Pinsetters Repossessed and Used Pinsetters Sold, '61-'72," and I ask it be marked D-4 for identification.

(Exhibit D-4 marked for identification.)

Q. I show you Defendant's Exhibit 4 and I ask you if you know what that is.

A. Yes.

Q. Briefly, without going into explanation of it fully, where does the information on that come from?

[2171]

A. This comes from numeric information on Exhibit 3.

Q. Anything else? Where does the information on the top line come from?

A. The repossessions come from this schedule prepared in our installment credit department, in its regular course of business.

[2172]

Q. Is there any information on this chart that is the same information as shown on Exhibit D-1?

A. The repossession information is the same.

• • •

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2174]

Mr. Seeley: I will ask that there be marked for identification as D-5 a sheet of paper captioned,

"Brunswick Corporation Net Transfers of Pinsetters to BCO or operation 1965 to 1972."

(Exhibit D-5 marked for identification.)

[2175]

Q. Mr. Barron, I show you D-5 for identification.

Is that something which you have examined and checked previously?

A. Yes.

Q. And in a very general way, what is it?

A. This is a schedule which shows the net number of units transferred to pinsetter units—transferred to bowling center operations division for operations each year from 1965 through 1972.

Q. And were these figures derived from documents which you have in your possession which are records of Brunswick Corporation?

A. Yes.

Q. Have you checked them?

A. Yes.

• • •

[2203]

Mr. Seeley: Thank you. I now ask to have marked for identification as D-7 a sheet of paper entitled "Brunswick Corporation, Number of Bowling Centers BCO Commenced Operating and Number Disposed of by Sale, Lease or Deactivation by BCO, 1965-1972, in the United States."

(Exhibit D-7 marked for identification.)

By Mr. Seeley:

Q. I show you D-7 for identification, Mr. Barron. Is that an exhibit which you have checked against Brunswick records for accuracy?

A. Yes, it is.

[2204]

Q. And without mentioning any numbers or anything, what types of information does it purport to reflect?

A. Well, this shows the activity in the years 1965 through 1972. And going across the page we have four columns. The first column shows the number of centers that were commenced operating.

The second column is the number of centers that were disposed of.

The third column is the net transfers, which is the difference between the first two columns, the number started and the number disposed of.

And then the fourth column is the number operated at year end.

Mr. Seeley: Thank you. I offer in evidence D-7.

Mr. Hoffmann: A few questions, if I may, your Honor.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

• • •

[2206]

Q. Are we to conclude that during that year BCO operated 124 centers, and that those were transferred to BCO by Brunswick Corporation, or some other branch?

A. They commenced operating that number. That doesn't mean they operated them all year.

Q. You have, "operated year end"——

A. And they were still operating them at year end. They did not dispose of any in 1965.

Q. Disposed of zero, is that right?

A. Yes, sir.

Q. Who does that mean, that, "by" BCO?

A. That is correct.

Q. Now, we get 13 in the next year, disposed of.

A. Yes, sir.

Q. When you say disposed of, what is meant?

A. It is a center that BCO stopped operating.

Q. For any particular reason?

A. For any particular reason.

Q. Not necessarily by sale.

A. It could have been by sale.

Q. But not necessarily by sale?

A. No.

[2207]

Q. What are some of the other reasons?

A. They just plain decided that this was a center that they couldn't make money at, they should stop operating. Could have been a fire loss. Generally, it is the ones with the——

Q. What about lease, what does that mean?

A. This would be a center which Bowling Center Operations ceased operating and which would have been, in turn, leased to a third party, to an independent party.

Q. Do you have the underlying material for 1966 which supports the item: 13 disposed of?

A. Yes, sir.

Q. What is that?

A. What is it?

Q. Yes, what does it consist of?

A. It consists of a listing of individual houses showing the center identification number, the name of the center, and the number of lanes, and, of course, the number of houses, which would be one for each case.

Q. Does it show how it was disposed of?
A. No, sir; it does not.
Q. Do you have something that shows that?
A. No, sir; I don't.
Q. You didn't bring it here?

[2208]

A. No, sir; I didn't.
Q. Do you know if any one of those 13 centers was sold?
A. Yes.
Q. In 1966?
A. Yes, sir.
Q. Where are you looking now?
A. I am looking at this list of center names, that I am familiar with, one of them.
Q. Maybe you misunderstood me. You do have a record which indicates whether it was sold.
A. No, I have a recollection of activities of—one of the names on here was sold.
Q. What is that?
A. Cabrillo Lanes.
Q. How about the other 12, do you have any recollection as to them?
A. No, sir; I don't.
Q. You don't know one way or the other, whether or not they were sold?
A. No, sir.
Q. Look at the next year, 1967, 14 disposed of. Do you know whether or not any of those were sold?
A. I don't know.

[2209]

Q. Look at the next year, 1968. Any of those sold?
A. No, I don't know.

Q. When you say you don't know, does that mean that you really don't know whether it was sold, or that you do know it was not sold?
A. I do not know if it was sold.
Q. You don't know one way or the other?
A. That's right.
Q. Do you know one way or the other how many centers Brunswick sold in the period of time from 1965 to 1970?
A. Exact number, no, I don't know.
Q. Do you know approximately?
A. It is my recollection that to date——
Q. I'd like you to please answer my question. To 1970.
A. I don't know.
Q. If I put it to you that it was two, would that surprise you in any way?
A. I don't know.
Q. You don't know one way or the other whether it was more than two?
A. I don't know.
Q. And yet you say, "disposed of 13, 1966; 14,

[2210]

1967; 8, 1968; 8, 1969; 3, 1970; including one destroyed by fire.

Sir, is it your point in this chart to demonstrate to the jury and to the Court that these centers were disposed of by sale?
A. No.
Q. As far as you know, two is correct; isn't that right?
A. I don't know how many.
Q. You don't know one way or the other?
A. I don't know.

Q. Now, sir, when a center is deactivated, what happens?

A. The Sales Department is first of all notified that BCO—it could happen in several ways.

Number one would be that the operating people decide that they shouldn't operate the center any longer. They will notify the Sales Department who will, in turn, try to sell or lease or work out some arrangements for the equipment.

If they can't, then the equipment will be removed.

• • •

[2212]

A. It is all done by Brunswick.

Q. Number of bowling centers BCO commenced operating and number disposed of by sale, lease or deactivation by BCO.

Your thought is now that, "by BCO," only refers to deactivation; is that right?

A. It is the number disposed of, period. Some of them were disposed of strictly by BCO deactivating, some were disposed of by the selling division selling or leasing them to third parties.

Q. This disposed of column again, 54 disposed of, were all of those 54 in the hands of BCO at some point in time before they were disposed of?

A. Yes.

Q. Now, when it is leased, what happens? Who leases it?

A. The sales operation would lease to a proprietor.

[2213]

Q. And who is the lessor, the fellow who gives the lease?

A. The lessor is Brunswick Corporation.

Q. And when it is sold, who is the seller?

A. Brunswick Corporation.

Q. When it is deactivated, who deactivates it?

A. Brunswick Corporation.

• • •

[2218]

Q. Who in the company does know how this column, "Disposed of," was prepared from the underlying data—

A. I am as qualified as anybody to say how it was prepared. It was prepared in our Bowling Center Operations acounting group. They merely went down the list of centers that Brunswick stopped operating and they

[2219]

recorded them on a sheet of paper.

Q. Did you ask them to ascertain and search and find out from the records how many were disposed of by sale and how many separately disposed of by lease and how many separately disposed of by deactivation?

A. I didn't ask them.

Q. What did you do, ask them to lump them all together?

A. Actually I asked them to give me the number of centers that were deactivated by BCO, that BCO stopped operating.

Q. Do you know whether they examined all three situations, sale, lease and deactivation?

A. I don't know.

• • •

[2221]

Mr. McNeill: Just on the record, I'd like to tender to Mr. Hoffmann now a copy of what purports

to be the lease between Brunswick Corporation and Rahway Recreation Realty Company, a New Jersey corporation, and Rahway Recreation, Inc., a New Jersey corporation, in connection with that Rahway center that was mentioned in testimony the other day.

Mr. Hoffmann: I'd like to ask counsel whether it is a management contract as represented by counsel?

Mr. Seeley: Counsel is not on the witness stand, and I instruct him not to answer.

• • •

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2229]

Q. Mr. Barron, I show you the document marked for identification Exhibit D-9. Is that a document which you have checked for accuracy against Brunswick records?

A. Yes, it is.

[2230]

Q. And what were the records to which you referred to check that document?

A. Copies of the bowling center operations, domestic, profit and loss statements for the years ended 1965 through 1972.

Q. And without mentioning any numbers, what kind of information does Exhibit D-9 purport to show?

A. This shows the consolidated domestic cash flow from bowling center operations for each of the years 1965 through 1972.

Q. Would you briefly explain to the jury what is the difference between net profit or loss and cash flow in business?

A. Well, cash flow from operations of the business is basically the difference between the amounts taken and

the amount of cash expenditures. If you take in more than you spend in cash, you have a positive cash flow; if you take in less than you spend in cash, you have a negative cash flow.

Now, there are other items that affect profit, non-cash charges, and the biggest one of these is depreciation. And in most cases the difference between cash flow and profit is the amount of depreciation.

• • •

[2231]

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Barron, could you tell us, please, precisely what records were used in preparation for that exhibit?

The Court: D-9?

Mr. Hoffmann: D-9.

A. I reviewed copies of the bowling center operations division consolidated statements of income, domestic, for each year.

Q. Did you have occasion to look at the individual computations of Brunswick for each one of its operated centers during the years, that is to say, the profit and loss statement for each BCO center?

A. No, sir; I did not.

• • •

[2232]

Q. Mr. Barron, do you have a copy of P-32 in front of you?

A. No, I do not. I have seen a similar schedule and I——

Q. If I may, I will give you a copy.

(Handed to the witness.)

A. In my review of our profit and loss statements I tried to determine why there were some differences. And basically there were some items which your accountants, or whoever prepared your schedules, treated somewhat differently than we do at Brunswick. The basic numbers are pretty much in agreement, but you treated some of them somewhat differently.

Q. Do you know whether these differences are differences which are accounted for by accounting judgment, are they differences in facts or are they differences in the opinion or judgment of an accountant?

A. It was my observation that they were differences of judgment.

Q. In other words, the underlying facts for both exhibits you feel are the same, is that right?

[2233]

A. Yes.

Q. You feel you used the same facts in preparation——

A. I don't know what facts you used. But in my comparison of your final number with our statement, I could see where there could be a difference of opinion.

Q. Can you define that difference of opinion, can you tell us what it is that you think that our accountant did and what you did?

A. The biggest one was—what you might want to call start-up costs.

The Court: What is it?

The Witness: Some people would call it start-up cost.

The Court: I still don't know what it is.

The Witness: Start-up—when Brunswick started up its bowling centers there were——

The Court: Start-up costs, is that what you call it?

The Witness: Yes, sir.

We incurred certain expenses for field personnel who went out and evaluated centers, who negotiated leases; we had training programs to train managers. And these were included in the expenses of the bowling center operations division.

[2234]

They were provided for in 1965, when we realized that we had a receivables problem and that we were going to be operating some bowling centers.

Now, in the subsequent years these items were charged to BCO expense, but the cash was actually paid out in those years. And if you look at the year 1966 you show a positive cash flow for us, whereas on the statement of Exhibit D-9 there is a small negative cash flow. And the difference between those numbers is the amounts of—what are called repossession expenses on here. They were charged to the repossession reserve, the reason that they were labeled that here. But these were the expenses of the evaluators and trainers and that sort of thing.

[2235]

Q. Mr. Barron, I show you defendant's Exhibit D-1, which is Interstate Lanes.

Mr. Seeley: Now renumbered 1A.

Mr. Hoffmann: All right, 1A.

Q. Interstate Lanes.

Can you show me where the start-up costs appear on this?

A. It was not charged to the individual centers. It was an administrative department in the bowling center operating division's headquarters.

Q. Where are the records which relate to the start-up costs, administrative department in the bowling center operation—

A. They are in Skokie, in our headquarters.

(Counsel approached side bar and the following proceedings were had without the hearing of the jury:)

Mr. Hoffmann: There have been two trials of this case. We have subpoenaed and we have supposedly received the underlying records and P and L statements for each of the BCO operated centers.

This witness has just testified that he has put on this chart certain start-up charges, which appear in the administrative records of

[2236]

Brunswick and which we have never seen, which have not been brought forward and which are not reflected in the underlying, I believe, profit and loss statements received by us.

It seems to me at the very least we should have had this presented to us prior to this trial. It was never presented before.

I'm going to object to the receipt of this exhibit on the ground that the underlying materials were never shown to counsel.

The Court: Before you answer, I note with interest that on P-32 for the year 1966 plaintiff shows a cash flow, positive, of $986,000, approximately one million dollars.

On D-9, the defendant's exhibit contains a negative cash flow, $177,000.

The witness just testified that there was a minor difference. If minor is close to one million one hundred thousand——

Mr. Seeley: I didn't understand him to say "minor."

The Court: Minor to this Court would not be 986 plus 177. If anything, it is major.

Mr. Seeley: The difference is, I would say, in the plaintiff's favor, but in response

[2237]

to Mr. Hoffmann's argument on the plaintiff's exhibit our cash flow was increased by not charging to expense the start-up costs.

The Court: I know.

Mr. Seeley: And we felt that they were not properly—we are not entitled to credit for that, and we are not entitled to take them out.

So we left them in and got a figure of a lower cash flow.

It's as we said, it's a matter of applying different accounting principles or accounting judgment. We wanted to take those which we felt were the most conservative for us and we knew we came out worse doing it that way.

Mr. Hoffmann: I don't know what worse or better is.

The question is integrity of the exhibit and accuracy of the exhibit.

I don't know whether it is worse or better for me to have a plus or minus for a particular year. The fact of the matter is we have gone by records which have been in the normal way presented to us, and we have prepared our schedules based entirely on defendant's records.

We have no way, we have no way of meeting

[2238]

this in the dark——

Mr. Seeley: I'm sure you received the consolidated cash flow and profit statements.

Mr. Hoffmann: We received from you individual and consolidated statements which are in——

The Court: What is this?

Mr. Hoffmann: Defendant's 1, which I am told is 1A.

The Court: Referring to 1A, is there any item in there for the start-up costs?

Mr. Hoffmann: There is none, and the witness so testified.

Mr. McNeill: Your Honor and Mr. Hoffmann, I think perhaps I can clarify this.

I was greatly concerned with producing documents, and I know for a fact that for each of the calendar years a consolidated domestic profit and loss statement was produced to the plaintiff. Mr. Barron, I believe, has copies of them with him. And that Mr. Barron's exhibit has been prepared from those exhibits, which indicate start-up costs which he just testified were included——

Mr. Hoffmann: He just testified, if you

[2239]

will pardon my interrupting you, he doesn't have them here, that they are in Skokie, he didn't bring them forward, they are subsumed under the heading of administrative costs.

Mr. McNeill: No, sir. Your question was do you have the basic records showing start-up costs?

You did not ask him does he have the year-end consolidated profit and loss statement which reflects the total year start-up costs.

Mr. Hoffmann: I asked him from what records was this prepared.

The Court: I think in fairness to this jury and Court I will permit you to conduct a further voir dire with this witness before I rule on the admissibility of D-9.

This is the Court's P-32 and D-9 which was marked for identification, which the Court holds.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

The Court: At the Court's direction following the colloquy at side bar, I hereby direct you, Mr. Hoffmann, to pursue the interrogation of this witness.

[2240]

By Mr. Hoffmann:

Q. Mr. Barron, Brunswick Exhibit 9 for identification, that was prepared from what source material?

A. From the year ending statements of profit and loss for the domestic bowling center operations, for the consolidated domestic bowling centers.

[2241]

Q. And the start-up costs, where were they derived from?

A. They were derived from certain departments within the bowling centers operations division, and they are included in the statements of profit and loss.

Q. What statements of profit and loss, sir?

A. Ones for each year.

Q. And are they included in the individual bowling centers statements of profit and loss?

A. No.

Q. Such as D-1A which I showed you a few minutes ago?

A. No. The statements for the individual centers contained the revenues and the expenses for each that are directly attributable to that center.

There are certain departments, departments like accounting, like administration, like service, which provides services to all of the centers, and those items are not included in the individual bowling centers.

One of the departments was the real estate department, which went out and negotiated leases. They are a part of that repossession expense.

• • •

[2247]

The Court: This Court has done a little arithmetic itself. Plaintiff's Exhibit 32 shows $23,502,000 plus cash flow, total aggregate, right?

The Witness: Yes.

The Court: Last column, last figures?

The Witness: Yes.

The Court: I have done a little arithmetic with D-9 which has been marked for identification. That comes to $22,691,000, in round figures.

Tell this jury in plain ordinary terms or words why the difference?

Can you answer that, or no?

The Witness: Well, I have been trying to explain it to Mr. Hoffmann.

The Court: Never mind, Mr. Hoffmann. How

[2248]

about those six people sitting over there?

They are more important than Mr. Hoffmann.

The Witness: The difference basically is that in 1965 when Brunswick was starting the operation of bowling centers we provided certain reserves for expenses which we knew we were going to have to incur to acquire the centers. We knew we were going to have to train people and we knew we were going to have to have teams of evaluators to go out into the field. It was going to cost us certain amounts of money for travel, for salaries.

And we provided expenses in 1965 to cover those future expenses.

Now, as they were incurred in later years, instead of charging them to the operating profits and losses of the division, they were charged to these earlier reserves which had been created in 1965. That's the reason for the differences.

By Mr. Hoffmann:

Q. Do those earlier reserves appear in some way on this consolidated statement that you say is the underlying basis—

A. No, the reserves appeared on the corporate balance sheet.

• • •

[2257]

DIRECT EXAMINATION (Continued).

Mr. Seeley: Will you please mark for identification as D-11 a sheet of paper with the caption, "Brunswick Corporation, Bowling Center Operations, Domestic, number and percentage of

[2258]

centers with positive or negative cash flows from operations 1965-1972."

(Exhibit D-11 marked for identification.)

By Mr. Seeley:

Q. Mr. Barron, I show you the document just marked for identification D-11. Is that a tabulation which you have checked against Brunswick records?

A. Yes, sir.

Q. And what are the records, what is the source of the information?

A. The source of the information behind this exhibit is the individual profit and loss statements for each of the centers which Brunswick was operating as of the year end 1965 through 1972.

Mr. Seeley: I offer D-11 for identification in evidence, your Honor.

Mr. Hoffmann: May I have a short voir dire?

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Is there a different source of information for Brunswick 11 from the previous exhibit, Brunswick 10?

A. Well, Brunswick 11 is from the individual center operating results, and Exhibit D-9, that was from the consolidated statement of income.

[2259]

Q. And you come up with different numbers in the two exhibits, 9 and 11?

A. Yes, sir; that's possible.

Q. And different numbers for the positive cash flow of Brunswick operated centers, depending upon what source you use, different for 9 and 11?

A. Number 11 doesn't show the amount of cash flow. It just shows the numbers of centers.

Q. I'm sorry. It says in the caption the number and percentage of centers with positive or negative cash flow from operations?

A. Yes, sir.

Q. Well, when you compute the percentage, you compute it from a number, don't you?

A. Yes, sir.

Q. And the number involved in 11, that was derived, according to your testimony, from the individual P and L sheets for the different centers, isn't that right; isn't that what you just said?

A. That's what I said.

Q. Whereas 9 was derived from consolidated statements, isn't that what you said?

A. Yes, sir.

Q. And you concede that these are different, do you not?

[2260]

A. One forms the basis from the other.

Q. But the numbers are different, aren't they?

A. They are not different at all. They form the basis for—the numbers for the individual centers form the basis for what gets into the top consolidated P and L.

Q. In respect of the individual P and L which was submitted to the plaintiff, and that you looked at and saw just a moment ago——

Can I have one, please?

(Handed to counsel.)

Do the numbers from which the percentage is taken of the positive cash flow—do they consist of cumulating, that is, adding one of these to the other and getting your total positive cash flow?

A. The numbers for percentage that are shown on Exhibit 11 are percentages of 100. In the first year, if you will notice, there is a number of 124 total centers. That is 100 percent. There is always 100 percent each year.

And we went back and reviewed the statements of the individual centers to determine the number that had a positive cash flow, the number that had a negative cash flow.

Q. You didn't take those off the consolidated,

[2261]

you took those from the individual statements, isn't that right?

A. That's correct.

Q. Whereas 9 was taken from the consolidated.

A. That's right.

Q. And if there exists discrepancies between the two, it is for that reason, is that your testimony?

A. There are not going to be discrepancies. There are some things that get into one statement that don't get into another. Every statement is not prepared for the same purpose.

• • •

[2264]

Q. And does the cash flow correspond in both 9 and 11?

A. It can be reconciled.

Q. It doesn't correspond; is that your answer?

A. I am saying that there are some items in our centers where subsidiary corporations, such as liquor corporations, are not consolidated; they have an effect on the cash flow.

Q. So you have two cash flows, don't you, one for 9 and one for 11, isn't that right; isn't that what you just said?

A. They could be different.

Q. It isn't a question if they could; they are different, isn't that so? They can be reconciled, you said.

A. Yes.

• • •

[2268]

DIRECT EXAMINATION (Continued).

Mr. Seeley: I will ask to have marked for identification as DX-13 a sheet of paper bearing the caption, "Brunswick Corporation, Domestic Bowling, Notes receivables and 90 days delinquencies and 90 day delinquencies at year end 1964-1972."

(Exhibit D-13 marked for identification.)

Q. Mr. Barron, I show you a copy of the document just marked for identification, DX-13.

Do you know from what Brunswick records the figures on DX-13 were taken?

A. These were taken from summaries of accounts—or rather notes receivable, equipment notes receivable, maintained in the installment credit department, and these show the balances outstanding and the amounts delinquent as of each year end from 1964 through 1972.

• • •

[2282]

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. Will you tell us what the sources of information for the Brunswick Exhibit No. 16, what were the sources, where did it come from?

A. Well, the first source was a study made by the corporate comptroller's office in 1965.

Q. What did he study?

A. He studied the cost of installing lanes and pinsetters for each of the years 1957 through 1965, and he determined that certain averages——

Q. That was for the period 1957 through '65?

A. No, he determined an average for each one of those years.

Q. For each one of those years 1957 to 1965?

A. Yes.

Q. Has that been reflected here in some way?

A. It's reflected in the support papers behind this exhibit.

• • •

[2286]

Q. That summary is entitled "Bowling Center Operation Unit Costs dated for acquisition."

A. Yes.

Q. Then beneath, year of installation. Now, sir, do you know anything about what the source for that was?

A. The source for that was an analysis of the individual years' costs, which was conducted by the people in the corporate comptroller's office.

Q. Made by whom?

A. I don't know the name of the individual.

Q. Made from what?

A. Made from an examination of the books and records of the bowling division.

Q. How do you know that?

A. Because we were told that by the corporate comptroller's office.

Q. In 1965?

A. Yes, sir.

Q. Did you check back today to find out what the basis was, or do you remember this from——

A. I remember that from being active in the things that were going on at that time.

Q. You have some lines here which indicate: Manufacturing costs, lane, $1,630; pinsetter, $2,680,

[2287]

is that right?

A. $2,680 or $2,860?

Q. $2,860. A total of $4,490, is that correct?

A. Yes, sir.

• • •

[2289]

Q. But the lanes and pinsetters in Brunswick Exhibit 16 are lanes and pinsetters transferred to BCO centers in 1965; they weren't new, were they?

A. They weren't new in 1965.

Q. When they were transferred to BCO.

A. But they were new when they were installed. That is all this exhibit tries to show, is what the cost of the equipment was when it was new and when it was installed.

Q. That is the cost to some independent proprietor, say, who buys from Brunswick?

A. That is the cost to Brunswick Corporation.

Q. Well, sir, you have a total of $8,687. Do you know what the cost—or, rather, the price was for a pinsetter in 1965, an automatic pinsetter?

A. To a proprietor?

Q. To a proprietor buying from Brunswick.

A. I am not sure of the exact figure. It was in

[2290]

the $8,000 area.

Q. Wasn't it $8,160?

A. I am not sure.

Q. About that?

A. In that vicinity; yes, sir.

• • •

[2345]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Mr. Barron, are you familiar with plaintiff's Exhibits 1, 1A and 1B, which show the price and the terms of sale of a Brunswick automatic pinsetter, and a bowling

lane, sold under Brunswick's standard forms of separate contracts for those items of equipment?

A. Yes, sir, I have seen them.

Q. Did you observe that on plaintiff's Exhibit 1 there is a finance charge added to the costs of the lane amounting to 14 and a half percent of the balance of the price, after deducting the down payment; and that on the pinsetter contract there is a finance charge amounting to 23 percent of the unpaid balance of the contract?

A. Yes, sir.

[2346]

The Court: I think you said 14 and a half percent on the lane, didn't you? I think it's 14 and a quarter.

Mr. Hoffmann: 14 and a quarter.

Mr. Seeley: 14 and a quarter. Thank you for the correction.

Mr. Hoffmann: Yes. And it is an interest factor, not a finance charge.

Mr. Seeley: I will call it an interest factor.

Mr. Hoffmann: That is what it is on the paper.

Mr. Seeley: All right.

The Court: Why not give it to him? Are you going to use it, Mr. Seeley? Does he need it?

Mr. Seeley: I don't think he needs it.

The Court: All right. If he does, I will give it to Miss Costello and she can give it to him.

By Mr. Seeley:

Q. And can you tell us what that interest charge amounts to in terms of a simple interest rate per annum over the period of those two contracts?

A. In both cases that would yield approximately 6

[2347]

percent simple interest.

Q. Under each of those contracts the purchaser is to pay a certain amount to Brunswick in equal payments over a period of years, is it not?

A. That is correct.

Q. And assuming that the payments are made as they are scheduled, does each installment include a part of the interest and a part of the balance of the purchase price?

A. Yes, it does.

Q. Would you please explain how Brunswick would apportion each of those equal payments as between the interest cost and the unpaid principal balance?

A. Well, as each payment is received, the amount of interest which is earned on the preceding outstanding principal balance is calculated and is deducted from the total amount of that payment. And the balance that remains from that payment becomes the amount applied to principal and reduces the principal amount of the loan.

As the second payment comes in, the process is repeated. But the calculation of interest is based on a somewhat lower principal balance, and so the amount applied to interest on the second payment will be less than the first, and the amount applied to prin-

[2348]

cipal will be greater. So the principal balance continues to come down, and the amount of interest expense continues to—or the amount of interest applicable to those payments continues on down and the principal becomes greater.

Q. Using the contract terms, which are reflected on plaintiff's Exhibit 1, have you prepared schedules to show

year by year how much of the payments falling due on each of those contracts would be credited to earned interest and how much would go to reduce the principal balance each year, assuming that all of the payments were made on time?

A. Yes, I have.

Mr. Seeley: Please mark as D-17 a sheet of paper bearing the caption, "Brunswick Corporation Payment Schedule, Five Year Bowling Lane Contract, as as shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-17 marked for identification.)

Q. Mr. Barron, I show you D-17 for identification. Is that a calculation which you made, or caused to be made by people working under you?

A. Yes, it is.

Q. And have you verified its correctness by checking it?

[2349]

A. Yes, I have.

Q. Without mentioning amounts, will you state what it purports to show?

A. It shows that for a five-year bowling lane contract, with the amounts of deferred principal balance that were spelled out in plaintiff's Exhibit 1 and 1A, that if the payments were made on time this would show for the five years the total amounts paid each year, the amount of those payments that would be applied to principal and the amount that would be applied to interest, and the principal balance that would be outstanding at the end of each year.

Q. I observe on D-17 for identification that the amount applied to interest in the year two is greater than the amount applied in year one; could you explain that, please?

A. Yes. It was Brunswick's policy when they install equipment prior to the opening of a bowling season, that they would not schedule payments due until the first month after the start of the season. And October was the typical first payment month.

So, if a customer had his equipment installed in May or June, or something like that, the first payment would become due in November—or in October. I'm sorry. And there would be no interest charge from

[2350]

the time of his installation until the first payment.

So that in the first year you always start out with a clean break. Then in the second year you had a moratorium in the summer months, where you have four months with no payments. So that in the second year, you have a larger proportional payment applied to interest because of this four-month span with no payments.

Mr. Seeley: I offer D-17 for identification.

The Court: Into evidence, right?

Mr. Seeley: Yes, I am offering it.

[2351]

Mr. Hoffmann: One or two questions, please.

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Seeley said that this chart was based on the assumption that the payments were made on time, is that correct?

A. Yes, sir.

Q. Well, what is this business about, for the second item, assuming that the payments were made on time; isn't that what it does?

A. In the second year?

Q. Yes.

A. No, sir. It assumes that in the second year, for example, you have a span for June, July, August and September for which the customer is not obliged to make a payment. That is, under the terms of the contract he pays eight months and he has four months off in the summer months, when he is not generally doing much business.

However, he still pays interest for that four months.

Q. You are assuming, then, in the items here, that the contract terms are followed, is that right?

A. Yes, sir.

[2352]

Q. There is no departure from the contract terms in these calculations.

A. No, sir.

Q. You are assuming that each payment made is made in accordance with the contract?

A. That is correct.

Q. Is that your testimony?

A. Yes, sir.

Mr. Hoffmann: I have no objection.

The Court: Into evidence, D-17.

(Exhibit D-17 received and marked in evidence.)

Mr. Seeley: I will ask to have marked D-18 for identification a sheet of paper bearing the legend "Brunswick Corporation, Payment Schedule, Eight

Year Automatic Pinsetter Contract, as Shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-18 marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. I will ask you, Mr. Barron, is D-18 for identification prepared in the same way as 17, except that 18 applies to the eight-year automatic pinsetter contract, whereas 17 applied to the five-year lane contract?

A. That is correct.

[2353]

Mr. Seeley: I offer D-18 into evidence.

Mr. Hoffmann: I just have one or two questions.

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. On 18—and I take it also on 17—you start with a principal balance, is that right?

A. Yes, sir.

Q. That's after a down payment is made, is that right?

A. That is correct.

Q. There is no indication of the total charge for the pinsetter on 18, is there?

A. No, sir; we started with the deferred balance after the down payment.

Q. But you have assumed, have you not, the correctness of Exhibit 1A when it puts down a pinsetter charge of $8100, haven't you?

A. Yes, sir.

Q. Then there would be a down payment of $500 against that which would leave a principal balance of $7600, is that correct?

A. That is correct.

Q. And you accept, then, the accuracy of

[2354]

$8100 as the pinsetter sales price, and $500 as the initial down payment from 1A, is that correct?

A. Yes, I do.

Q. And in respect of the previous exhibit, 17, the same is true about lanes, is it not, that you start with a principal balance of $3600, which reflects a sales price from 1A of $4500, is that right, plus a down payment of $900?

A. That's right.

Q. That isn't reflected on the face of your exhibit, but that is the system you use, is that correct?

A. Yes, sir.

Mr. Hoffmann: I have no objection.

The Court: Into evidence, 18.

(Exhibit D-18 received and marked in evidence.)

Mr. Seeley: I will ask that there be marked as D-19 for identification a sheet of paper bearing the caption "Brunswick Corporation, Combined Payment Schedule, Eight Year Automatic Pinsetter Contract and Five Year Bowling Lane Contract, as Shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-19 marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2355]

Q. Mr. Barron, does D-19 for identification do anything other than combine on one piece of paper the figures from D-17 and D-18?

A. No, sir; that's exactly what it does. We added up all the columns on 17 and all the columns on 18 to get the combined total for those two contracts.

Mr. Seeley: I will offer in evidence D-19.

The Court: Excuse me. It is also a combination of 1 and 1A, right?

Mr. Seeley: Not a combination. The basic terms of the contract are taken from 1 and 1A.

The Court: Right. All right.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. But 1 and 1A also show down payments, do they not?

A. Yes, sir.

Q. And 19 doesn't show them.

A. No, sir.

Q. It starts with the principal balance of $7,200, is that right?

A. Yes, sir.

Q. It omits the fact that the purchaser has put out $1400 in down payments, is that correct?

A. This was to show the payments schedule remaining

[2356]

on the contract after his down payment.

Q. But he would have put out $1400, isn't that right?

A. Yes, sir.

Q. So that you would have had an initial cost to the consumer of the principal balance of $11,200, plus the $1400, is that right, or $12,600?

A. That would be the beginning contract amount, yes.

Mr. Hoffmann: No objection.

The Court: When you say 1400, you mean the 5 on the—

Mr. Hoffmann: 5 and 9.

The Court: —on the lane and 9 on the pinsetter.

Mr. Hoffmann: Yes.

The Court: All right. Just the opposite—

Mr. Hoffmann: The opposite, 5 on the pinsetter and 900 on the lane.

The Court: Right. Sorry.

(Exhibit D-19 received and marked in evidence.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Just to make it quite clear, you recall, do you not, that on Plaintiff's Exhibit 1 there appeared as the sales price—the price of a lane and pinsetter

[2357]

—which totalled $12,600, and then some other items which were described as furniture, and whatever else went into the center, which brought it up to an even $15,000?

A. Yes.

[2358]

Q. And is it not true that you have not attempted in Exhibits 17, 18 and 19 to figure out any interest on that extra $2400 worth of furniture, and so forth?

A. No, sir; Brunswick wasn't involved in the sales of those items and we didn't try to take them into consideration.

Q. Do you have 19 before you now, sir?

A. Yes, I do.

Q. Would you please go down Exhibit 19 year by year, starting with the principal balance at the beginning, and showing the manner in which it was reduced each year, the total payment, the principal, the interest and the remaining balance, and so on through the exhibit?

A. After this customer's down payment, would have been applied to his contract, he would have a beginning principal balance of $11,200.

The Court: Tell the jury whether it is on the pinsetter, the lane or both.

The Witness: This is on the combined pinsetter and lane contract.

The Court: All right.

A. (continuing) In the first year of those two contracts he would have required total payments of

[2359]

$1,990, of which $415.68 would be applied to interest and $1,573.32 to principal. This would bring the principal balance down, after the first year of payment, then to $9,626.68.

On the second year, his payment requirement is $1,992. That's a little bit different from the first year because of rounding. We throw the odd amounts in the

first year. In the second year he had a total payment requirement of $1,992 for the two contracts. The interest earned on those payments would have been $538.47. Principal application would be $1,453.53, which would bring the principal balance down to $8,173.15.

The third year, his total payment requirement again is $1,992. The interest portion would be $438.87 and principal would be $1,553.13. And at the end of the third year his principal balance would be $6,620.02.

In the fourth year again he would have a requirement of $1,992. The interest portion would be $339.29 and the principal would be $1,652.71. And the principal balance is now down to $4,967.31.

The fifth year, he again pays $1,992. The interest now is $239.71. You notice that keeps coming down each year. And the principal application was $1,752.29. Bringing the principal balance down to

[2360]

$3,215.02 at the end of the fifth year.

In the sixth year, his lanes are paid up. He finished paying for those in the five years. So in year number six he has a total payment requirement of only $1,168. And of that $152.71 would be applied to interest, $1,015.29 would be applied to principal. And the principal balance is now reduced to $2,199.73.

In the seventh year, he again has a $1,168 payment requirement, of which $96.33 is interest, and $1,071.67 is principal, reducing the balance on principal to $1,128.06.

In year number eight, he has another payment year of $1,168. The interest is $39.94, and $1,128.06 is principal. At the end of the eighth year he is paid up.

Mr. Seeley: Thank you.

The Court: Why not tell the jury the last line?

Mr. Seeley: We can.

The Witness: The total payments?

The Court: Yes.

Mr. Seeley: Yes.

The Witness: Well, for the eight years his total payments, other than the down payment—he would pay $13,461 on these two contracts, of

[2361]

which $11,200 would be beginning principal, and total interest would be $2,261.

The Court: All right.

By Mr. Seeley:

Q. Mr. Barron, do you have in your possession a profit and loss statement for the year 1966 of Paramus Bowl-O-Mat Corporation?

The Witness: Will you excuse me a minute?

Mr. Seeley: Yes, sir.

(Witness produces papers.)

A. Yes, I do.

[2362]

Q. And is that a profit and loss statement which I represented to you had been supplied to us by plaintiffs' counsel?

A. Yes, sir.

• • •

Q. On that profit and loss statement does there appear a figure for the total income of Paramus Bowl-O-Mat Corporation for its fiscal year 1966?

A. Total revenue?

Q. Total revenue, yes.

A. Yes, sir.

Q. And do you also find on there figures for the expense incurred for advertising and promotion by that corporation during the same year?

A. Yes, sir.

Q. Have you made a calculation to determine what percentage the expense for advertising and promotion was of the total income revenue?

A. Yes, sir; the total advertising and promotion expenditure in that year, at Paramus Bowl, was 5.6 per

[2363]

cent of total revenue. They spent $16,719 on total revenue of $300,866.

The Court: Give me the total revenue again.

The Witness: $300,866.

Q. Do you have also with you a profit and loss statement for the same year, 1966, of Fair Lawn—Brunswick's Fair Lawn Lanes?

A. Yes, sir.

Q. Would you get it out, please?

A. I have it.

Q. Is there a figure on that for the total revenue of that bowling establishment for the year?

A. Yes, sir.

The Court: What year?

Mr. Seeley: 1966.

Q. Is there also a figure on that profit and loss statement for the expenditures for advertising and promotion during 1966?

A. Yes, sir.

Q. Have you made a calculation as to the percentage which those expenditures for advertising and promotion were of the revenue as shown, total revenue as shown?

A. Yes, sir.

Q. What percentage did you find?

[2364]

A. I found that Fair Lawn's advertising and promotion expense was 2.0 per cent of total revenue.

The Court: What was the total revenue?

The Witness: The total revenue was $280,893. The total advertising and promotion expense was $5,507.

Q. Do you also have a profit and loss statement for Paramus Bowl-O-Mat Corporation for its fiscal year ended August 31, 1967?

A. Yes, sir.

Q. And what is the total revenue of the corporation in that year, as shown by that statement?

A. The total revenue for Paramus in 1967 was $287,006.

Q. And what is shown, if anything, as to the expenditures for advertising and promotion?

A. $10,628.

Q. And have you calculated what percentage that expenditure for advertising and promotion is of the revenue figure you stated?

A. Yes, sir; it was 3.7 per cent.

Q. Do you also have a profit and loss statement for 1967 for Brunswick's Fair Lawn Lanes?

A. Yes, sir.

[2365]

Q. What does it show as to the total revenue of that center for 1967?

A. Total revenue Fair Lawn Lanes, 1967, $266,344.

Q. And what is shown as the expenditure for advertising and promotion?

A. The total expenditure is $5,845.

Q. And have you calculated the percentage relationship of that expenditure for advertising and promotion to the revenue figure which you have given?

A. Yes. That was 2.2 percent.

Q. Do you have, sir, a profit and loss statement for the year ended August 31, 1966, for Pueblo Bowl-O-Mat Corporation?

A. August 1966?

Q. Yes.

A. That's the one we just had.

Q. Pueblo.

A. Oh, I'm sorry. Yes, I have one for August 1966 for Pueblo.

Q. Does that show the total revenue?

A. Yes.

Q. What's the figure?

A. Total figure, 1966, revenue at Pueblo $218,488.

Q. Does it show figures for advertising and promotion?

[2366]

A. Yes, it does.

Q. What is that figure?

A. The figure is $10,913.

Q. Have you calculated the percentage which the expenditures for advertising and promotion are of the revenue?

A. Yes. 5.0 percent.

Q. Do you have a profit and loss statement for Belmont Lanes for the year 1966?

A. Yes, I do.

Q. What does it show as to the total revenue of Belmont Lanes?

A. It shows total revenue of $167,457.

Q. What does it show as to the expenditures for advertising and promotion?

A. $4,162.

Q. What have you calculated as the percentage which the expenditures for advertising and promotion at Belmont was of this revenue in that year?

A. 2.5 percent.

Q. Do you also have a profit and loss statement for the year ended August 31, 1967, for Pueblo Bowl-O-Mat Corporation?

A. Yes, I do.

Q. What is shown as the total revenue of

[2367]

that center for that year?

A. For 1967, Pueblo Bowl-O-Mat had total revenue of $226,586.

Q. What is shown as the expenditure for advertising and promotion?

A. $8,396.

Q. What percentage are those expenditures of the total revenue?

A. 3.7 percent.

Q. Do you have a profit and loss statement from Brunswick's Belmont Lanes for 1967?

A. Yes, I do.

Q. What does it show as to the total revenue of Belmont Lanes in that year?

A. In 1967 Belmont Lanes had total revenue of $172,611.

Q. What is the expenditure for advertising and promotion?

A. Expenditure, $6,133.

Q. What percentage did you calculate that those expenditures are of the total revenue?

A. 3.6 percent.

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[2371]

JOHN A. BARRON, resumed the stand and testified further as follows:

Mr. Seeley: Would you kindly mark for identification as Exhibit 16A a sheet of paper captioned "Brunswick Corporation, Original average manufacturing and installation cost to Brunswick of lanes and pinsetters transferred to BCO centers in 1965, in the United States."

(Exhibit D-16A marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. I show you Exhibit D-16A for identification and I ask you if the figures which appear thereon opposite the words "manufacturing cost and installation cost" are the same figures to which you have testified previously as they appeared on the top portion of Exhibit D-16 for identification?

A. Yes.

Mr. Seeley: I offer in evidence Exhibit D-16A, your Honor.

The Court: Mr. Hoffmann?

Mr. Hoffmann: Can I have just a moment, if your Honor please? I just want to locate the prior testimony.

Just a few questions on voir dire, if I may.

[2372]

The Court: Proceed, please.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. The heading "Original average manufacturing and installation cost," Mr. Barron, how was the averaging of installation costs done?

A. It was done by the corporate comptroller's office, analyzing each year's activity for the installation of equipment, the total amount of installation costs and expenses were determined, divided by the number of units that were installed.

Q. And the years which were involved in this original average of manufacturing and installation costs, can you tell us what years they were?

A. Yes, sir. They were the years 1957 through 1965.

Q. Did you pick up any later years in making that average?

A. No, sir.

Q. Not 1966 and 1969?

A. No, sir.

Q. In respect to the manufacturing costs, is that a full—is that a full item, that is to say, does that fully reflect all of the manufacturing costs?

A. As best could be determined, yes, sir. I don't—yes, it was all of the manufacturing costs.

[2373]

Q. Those are the full manufacturing costs?

A. Yes.

Q. What do they include, do you know offhand?

A. They include all of the materials that entered into the product, all of the direct labor that was used in the construction and all of the manufacturing overheads.

Mr. Hoffmann: That's all. I have no objection.

The Court: Into evidence, D-16A.

(Exhibit D-16A received and marked in evidence.)

[2374]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Mr. Barron, during the period that BCO has operated bowling establishments, has Brunswick had any cash needs for the payment of principal or interest on money which it owes?

A. Yes, sir.

Q. How much money did Brunswick owe on interest bearing obligations at December 31, 1964?

A. Could I refer to an annual report that we have?

Q. Yes.

A. At the end of 1964 we had total consolidated long term debt of $314,442,000.

Q. How much interest did Brunswick Corporation pay in the year 1965?

A. In the year 1965 we paid a total of approximately $18,520,000.

Q. Have cash needs, or the payment of such interest, or of any corporate interest, or the repayment of principal

on corporate loans, been reflected in the accounts which have been kept for the BCO Division?

Mr. Hoffmann: I object to the question as to form, your Honor. It seems to be three questions in one.

The Court: Do you understand it?

The Witness: Yes, sir.

[2375]

The Court: Overruled. I will permit him to answer it.

A. No, sir; it was Brunswick's policy to charge those expenses at the ...porate level and not at the operating level.

Q. What is the reason for that, if you know?

A. Well, two reasons, the main one being that the people who operate bowling centers have no control over the borrowing of funds and it's Brunswick's philosophy to administer those funds at the corporate level and that is where the interest charges are carried on the books.

Q. If Brunswick had wished to do so, could it have allocated portions of its indebtedness among various divisions or activities of the corporation?

A. Yes, it could.

Q. Could you now, for the purposes of this law suit, make an allocation to the BCO operation of a part of Brunswick's cash needs for the payment of principal and interest on its debts?

The Court: Repeat it, please.

(Question read.)

Mr. Hoffmann: I object to this question. The form of the question seems to me to include both the concept of interest and the concept of

[2376]

cash needs, and the initial part of the question asks whether he could do it now. I suppose the answer to that is—if the answer to that is yes, that he will do it, he will sit down in front of us and do it. If the question is, did he do it a few weeks ago, perhaps that question will be unobjectionable, if the rest of the form is correct.

The Court: To assist the jury, are you going to ask the witness to allocate?

Mr. Seeley: Yes, sir.

The Court: To what? What is going to follow? I will consider this a proffer of proof.

Mr. Seeley: He is going to describe the manner in which he has allocated to BCOD a portion of Brunswick's needs to pay interest and principal on its obligations from 1965 through 1972.

The Court: Answer the question.

The Witness: Yes.

The Court: What did you say, Mr. Seeley?

Mr. Seeley: 1972—I believe it is actually through 1975.

A. Yes, I could.

The Court: Answer it, please. Overruled.

[2377]

The Witness: Do you want me to describe it?

The Court: He asked you the question, could you allocate it? The answer is yes or no, or maybe.

A. Yes, I can.

The Court: What is your next question?

By Mr. Seeley:

Q. And have you done that, sir?

A. Yes, I have.

Mr. Seeley: I will ask to have marked for identification as Exhibit D-20 a sheet of paper headed, "Brunswick Corporation, Allocation to Bowling Center Operations, U. S., of a share of Brunswick's Cash Needs 1965-1975 for payments on loans obtained prior to 1965 related to domestic bowling equipment receivables."

(Exhibit D-20 marked for identification.)

Q. I show you the document marked Exhibit D-20 for identification and ask if you will, please, without referring to any amounts, or figures, describe the manner in which that document was prepared, the steps which were gone through in preparing it?

A. Well, the first thing we did to arrive at this allocation was to examine and determine the total amount

[2378]

of domestic bowling notes receivable which we had on our books at December 31, 1964. And secondly, we examined the books and records to identify the loans which we had with our banks, insurance companies and outside financial institutions, which were directly identified with the bowling receivables.

In the case of a large loan we had with C. I. T. Corporation, the notes receivable were specifically assigned to C. I. T. Corporation as security. In the case of the large loans with banks and insurance companies, these loans were not specifically assigned by the contracts, but we were prohibited from disposing of our notes receivable and also the people that were lending us the money specifically relied on those in their negotiations and meetings with us, as that was going to be the source for repayment of the loans.

So we identified those. And then we calculated a ratio of the bowling loans to the bowling receivables. After that, we did another survey of the establishments that were taken over for operation by BCO in 1965 and we determined the principal amount of indebtedness that was owed to Brunswick by the accounts that were in that group.

[2379]

A. (Continuing.) We then applied the ratio of total loans to total receivables, total bowling loans to total bowling receivables, to the principal amounts owed by customers that were repossessed and operated by BCO, and that ratio gave us the portion of the total loan that was allocable to the BCO operation.

Q. Now, you spoke of equipment transferred to BCO in 1965. Was that the equipment which had been—was that equipment which had been repossessed by Brunswick?

A. Yes, sir, it was.

Q. And at the time of repossession was the principal still due on receivables written off?

A. Yes.

Q. Now, after having arrived in the manner you have described at the sum representing indebtedness allocated

by you to BCOD, did you do anything further to break that down?

A. Yes. We calculated the total payments made by Brunswick on those loans, total amount of principal and total amount of interest paid from the years 1965 through 1962, and we divided that by 3,615 lanes, which was the number of lanes which we started to operate that year, and that gave us the total amount that could be allocated according to the actual payment schedule for

[2380]

the years 1965 through 1972, and then we projected the amounts which we know would be paid in 1973, '74 and '75, and that gave us the total payment per lane related to the 1965 loans.

Q. Do I understand that this is per lane per year?

A. For each of the years, yes, sir.

Q. And is there a breakdown on the exhibit as between principal and interest each year?

A. Yes, there is.

Q. In your opinion, sir, was that a fair and reasonable way of allocating to BCO centers a share of Brunswick's total cash needs for the repayment of loans and interest thereon related to pinsetters transferred to BCO in 1965?

A. I think it was very reasonable.

Q. Will you please explain the reason for that opinion?

A. Well, it could have been much higher. Brunswick's debt on equipment repossessed in 1965 was considerably higher than the debt that just related to BCO activity.

Brunswick still had to pay all of the loans that related to those accounts. We have shown in here only the amount allocable to the BCO houses, and the banks and the insurance companies, they looked to Brunswick to be

[2381]

paid, and I think that this was a very reasonable calculation.

Mr. Seeley: We offer in evidence Exhibit D-20 for identification.

Mr. Hoffmann: Your Honor, I'd like a voir dire, if I may.

The Court: All right.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. When did the thought first occur to you, if it did, Mr. Barron, to try to allocate interest to the BCO centers?

A. In our discussions regarding this case, going back the last couple of years.

Q. You didn't have them for a prior hearing in this case, did you?

A. No, sir.

Q. Indeed, you had them only quite recently, haven't you, this graph—this exhibit?

A. Well, we started talking about it a couple—two, three years ago.

Q. And you started to make it up when; when was this piece of paper prepared, this proposed exhibit?

A. This final draft was prepared within the last week.

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[2394]

Q. Now, Mr. Barron, when you talk of a bowling center, you are not talking about the lanes and the pinsetters only, are you?

[2395]

A. No, sir.

Q. The building, parking lot, good will, leagues, bowlers who come in, a strategic location, perhaps, on the roadway, all these things, is it not, sir?

A. They are all part of a center.

Q. Of a bowling center. So that when you talk about correlating the machinery you repossessed from a prior owner to the center, you are not talking about a bowling center, are you, you are talking about what was owed by a prior owner, or operator?

A. That is correct.

Q. What he bought from you. He didn't buy good will from you, did he?

A. No, sir.

Q. He didn't buy a strategic location from you, a lease from you, perhaps a piece of real estate from you; those things he didn't buy, did he, from you, from Brunswick?

A. No, sir.

Q. By what accounting method, sir, are you permitted, in good conscience, to allocate to a bowling center, operated by Brunswick, the debts of a prior owner?

A. The loans that were related to those receivables

[2396]

had to be paid. The banks and the insurance companies looked to Brunswick Corporation to pay them. And what we have done with this schedule here is allocate to those centers a portion of the loans that Brunswick had. The banks and insurance companies didn't care where the money came from, just as long as it came from Brunswick.

Q. And Brunswick was prepared to pay them from some source other than BCO, isn't that right?

A. No, sir; they weren't prepared, the Brunswick obligation was there, and one of the ways that they hoped to stabilize the situation was to operate some of these centers.

Q. Did Brunswick have any large sums of money tied up in inventory at the Brunswick operated centers?

A. Inventory; no, sir.

Q. Did they have any large sums of money tied up in receivables, owing to the BCO operated centers?

A. Receivables owing to Brunswick prior to that repossession, yes.

Q. No, to the center that——

A. No, the receivables were written off prior to the acquisition.

Q. So by your own definition of interest, sir, what is there at a particular center which justifies

[2397]

the payment of interest—the charge of interest?

A. The fact that the interest expense was there and it was related to that receivable. Whether we wrote it off or not, the debt was still there, it had to be paid.

Q. You are saying, sir, that if somebody owed you a debt, and you later took over the center, Brunswick made a deal with the landlord, or purchased the property, or leased the property, made a settlement arrangement, made a deal with the prior debtor, the former owner—after all of that, there lingers in the air, somewhere over that BCO center, some debt that you now can allocate to that center; is that what you are saying to us?

A. There lingers a certain amount of debt that could be allocated to that center, if we chose to do it that way for administrative purposes.

Q. For administrative purposes. But you didn't choose to do it at any time except for the purpose of this case, isn't that so?

A. That is correct.

[2398]

Q. Why did you do it for the case and not for the realities of living, not for the normal bookkeeping or accounting purposes of Brunswick?

A. We did it that we could show to you that there were indeed a large amount of debt, a large amount of interest expense which was Brunswick's obligation.

Q. Now, sir, you say that the Brunswick Corporation had owing to it this debt, do you not?

A. It had debt owing to it from the customers, yes.

Q. As far as that is concerned, the Brunswick Corporation also had credits coming to it from customers, did it not?

A. Yes, sir.

Q. And those credits exceeded, even in the dark year of '65, the debts that were owing to Brunswick, isn't that also so?

A. The interest income exceeded the interest expense.

• • •

[2400]

Q. You chose to use your own years, didn't you, for this chart, for this exhibit?

The Court: Refer to it, please.

Mr. Hoffmann: D-20, isn't it?

A. We started with December 31, 1964, with the amount of receivables that were due to Brunswick and the amount of loans that were due by Brunswick to its lenders.

Q. So that the year you started with is the same year to which you had reference here, is it not, with a million and a half on the plus side for Brunswick?

A. The subsequent year was that, yes.

Q. I ask you this, sir. Has there been any effort made to treat with these individual centers as a small fraction, whatever that fraction might be, of the total Brunswick operation in relation to its credits and its debts; for example, let us suppose that a bowling center yields $100,000 cash flow a year, and let us suppose 1965 the net sales in revenue to Brunswick were $314,876,000.

Did you try it out by taking 100,000 and dividing 100,000 into three hundred and fourteen million to see what fair percentage this BCO center might have of the revenues and of the obligations, too,

[2401]

of Brunswick?

A. Have I done that?

No, sir. It would serve no business purpose to do that.

Q. Why not?

A. Well, because in evaluating administration of a BCO center, we look at that center as a separate unit and we measure the management's achievements in that center by looking at it, and it alone.

Q. Thank you. So that is a separate unit in which there was, according to your testimony, no vast investment, is that right?

A. For book purposes, yes.

Q. There was no meaningful inventory, is that right?

A. No significant inventory.

Q. No significant inventory. There were no significant receivables, is that right?

A. No, sir.

Q. Tell us again, please, Mr. Barron, how it is that you looked at this as a separate entity, this BCO center;

as some creature which has no significant inventory, no significant receivables, no plant investment; what is it, some abstraction that somebody wrote in chalk on the wall somewhere?

[2402]

A. No, sir; this is an entity that was taken over and operated by Brunswick in an effort to stabilize the business conditions and straighten out its receivables portfolio, and to recover some of the funds that we would not otherwise have been able to get.

Q. In point of fact, the BCO centers yield a great deal of money today, do they not?

A. They are producing cash flow; yes, sir; but they still have a long way to go to produce the amounts that were owed to us at the time of repossession.

Q. Do you know how much they produced each year; do you know how much they produced in '72, for example?

A. I believe last year was—Excuse me a minute.

(Producing papers.)

$8,472,000.

Q. They gave the company $8,472,000 last year, is that what you are saying?

A. That's what they produced in cash flow, yes.

Q. How much did Brunswick pay out for them this last year, if you know?

A. For them?

Q. Yes.

A. Well, with the allocation of charges as we have calculated them here, they would have paid out $18,801,000.

[2403]

Q. Do you mean they paid out in that year, 1972, eighteen million—

A. I'm sorry, that was the total—yes, that's right. We would have paid—

Q. Will you say it again, please?

A. No. $1,880,000.

Q. And that is based upon—they bring in more than eight, and you put out more than one, is that right, and that is based upon a state of facts that never existed, isn't that right?

A. That's for the year 1972.

• • •

Q. Is there anything, Mr. Barron, that has happened over these years, 1965 to 1972, which is reflected in bookkeeping, that Brunswick gave to banks, in support of applications for loans, or tax statements that Brunswick gave to the State govern-

[2404]

ments and the Federal Government, which reflect this interest charge as applied to individual bowling—operated centers, BCO centers?

A. It was Brunswick's policy, for administrative purposes, not to so charge interest to the individual centers.

Q. But notwithstanding the Brunswick policy, you now are willing to make certain assumptions, for purposes of this law suit; is that your testimony?

A. Not assumptions, allocations.

Q. Allocations of what, sir?

A. Allocations of loan payments and interest applicable to those loans.

Q. Now, getting back just once more, when you said allocations of loan payments, you are not talking about

loan payments made by these particular BCO centers, are you?

A. I am talking about loan payments by Brunswick Corporation.

* * *

[2423]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. At the end of the year 1964, did Brunswick own certain dollars worth of receivables representing payments to be made, payments owed to Brunswick by purchasers of bowling equipment?

A. Yes, sir, there were very large amounts due.

Q. Now, then, at the same time did Brunswick Corporation owe a certain amount of money on loans which it had obtained in connection with the creation of those bowling receivables?

A. Yes, sir, we did.

Q. And did you in the calculations which you made establish a percentage ratio between the amount of Brunswick's bowling receivables and the amount of its indebtedness related to those receivables on December 31, 1964?

A. Yes.

Q. And during the year 1965, was a certain dollar amount of those receivables lost to Brunswick because of repossession of the equipment on which it was owed?

A. Yes.

Q. And thereupon, did Brunswick have instead of the lost receivables a certain amount of bowling equipment?

[2424]

A. Yes.

Q. Which went into BCO houses?

A. That's right.

Q. Now, then, for the purpose of allocating to that equipment in BCO houses a portion of Brunswick's total indebtedness, have you applied to the receivables lost through repossession the same percentage ratio as existed between the total amount of receivables and the total amount of indebtedness Brunswick owed?

A. No.

[2425]

The Court: I would like to clarify something in my own mind.

Mr. Seeley: Yes, sir.

The Court: Mr. Barron, let's assume that Mr. Jones—the hypothetical person used by Mr. Hoffmann—he wants to establish a bowling center in Peoria, Illinois. The entire set-up is going cost, let's say, half a million dollars.

Assume further that Mr. Jones has $150,000. He has to borrow $350,000 from Brunswick. Do you follow me so far?

The Witness: Yes, sir.

The Court: Assume further that two years later the center fails. Right, sir?

The Witness: Yes, sir.

The Court: Let me go back a step. Brunswick had to go out and borrow $350,000 to loan it to Mr. Jones, right?

The Witness: Yes.

The Court: They had to pay interest on that obligation to the institution from whom those monies were borrowed, right, sir?

The Witness: That is correct.

The Court: Are you telling this jury that you consider that in the allocation or preparation

[2426]

of these figures in D-20?

The Witness: Yes, sir.

The Court: That's how you broke it down.

The Witness: That is exactly what we are trying to tell them.

The Court: All right.

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[2495]

By Mr. Hoffmann:

Q. Please take a look at it, sir. Just read this as 1A rather than 1.

The Court: It says 1 on it?

Mr. Hoffmann: It says 1 on it.

Q. Can you tell me what that is?

A. This is the individual profit and loss statement for Interstate Lanes for December 1972.

Q. And what is Interstate Lanes?

A. Interstate Lanes is a bowling center which Brunswick operates in Ramsey, New Jersey.

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[2498]

Q. Does that purport to be a full profit and loss statement for Interstate Lanes?

A. Yes, sir.

Q. Thank you. By the way, could you find for us, please, some interest item on that exhibit?

A. There is no interest item on that exhibit, because for administrative purposes Brunswick does not charge interest to its bowling centers.

Q. Can you tell us what the principal is from that exhibit?

A. The principal—

Q. Yes, the principal for this center, Interstate Lanes of Ramsey, New Jersey.

A. For administrative purposes, Brunswick did not

[2499]

allocate loans to the individual centers; if we wanted to, we could.

Q. Principal or interest, is that right?

A. We did not, sir, no. If we wanted to, we could have; but we chose, for administrative reasons, not to.

Q. So with all the records that you have, and which you summarize, which are put into the memory tape of the computer, and which come out here in printed form, there is no principal or interest factor; is that what you are saying to us?

A. For an individual center, no, there is not.

Q. And if we have all of your printouts for the Brunswick operated centers, and we examined them, and we add them up, and we make our own calculations from them, we will have no interest or principal factor appearing, isn't that right; this is all we are using?

A. If that is all you had to use, that's right, you wouldn't find them.

[2500]

The Court: Excuse me, Mr. Hoffmann. What do you mean by for administrative purposes?

The Witness: Well, sir, Brunswick's management philosophy is to try to measure people and have them report against their activity for the things for which they are responsible.

In the case of bowling center operations, for example, the people that run bowling centers, they control the revenues, they control the cost, they—and they could be measured by how well they perform against the budget. The people who run bowling centers have nothing to do with borrowing money.

The borrowing of money for the repayment of debt, interest rates to be charged, those are all the responsibility of the corporate treasury department.

So for administrative purposes when Brunswick looks at the results of operations of the bowling center activity, they don't consider interest in that judgment. They set a budget for revenues and budget for expenses, and they measure the bowling management as to how well they operate with that budget or how well they control costs, how much they improved their activity over the

[2501]

prior year, and in the case of interest they—the people who run bowling centers have no control at all over interest, and for that reason——

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[2515]

Q. Now, sir, do you know whether or not during much of the period described by this exhibit there were a sizeable number of Brunswick operated centers operating at a loss?

A. Well, we showed an exhibit the other day, the number of centers that we had with positive and negative

cash flows, and there were substantial centers in the early years, and that gradually changed to where we had very few cash loss centers.

In 1972——

Q. How many in 1969, if you know?

A. 1969 there were 38 centers with a negative cash flow and 127 centers with positive cash flow.

Q. How about 1966?

A. 74 centers with negative cash flow and 87 with positive cash flow.

Q. How about 1965?

A. 89 centers with negative cash flow and 35 with positive cash flow.

Q. Now, in 1965, 6 and 7, were those years in which you find that the negative centers, negative cash flow centers, exceeded the positive, those three?

A. 1966 and forward, the positive exceeded the negative. In 1965 was the only year that negative cash flow centers exceeded positive.

[2516]

Q. According to your calculations?

A. Yes.

Q. Now, sir, did you extract in 1965 any money from any of these centers to supply Brunswick needs for the purpose of paying off principal and interest?

A. The ones with the negative cash flow, no.

• • •

[2518]

The Court: Referring to Exhibit number——

Mr. Hoffmann: No. 1A, Plaintiffs' 1A, page 1.

Q. Do you see that item?

A. Yes.

Q. You have accepted that item, have you not, in your charts as representing the cost of a pinsetter?

A. To a customer.

Q. Yes.

A. Yes.

[2519]

Q. Now, then, normally the down payment would be $500?

A. Yes.

Q. Which would leave a balance of $7600; is that right?

A. Yes.

Q. When Brunswick sold a pinsetter to an independent proprietor it received the $500 and had owing to it $7600. What did it do with that debt; did this debt become something that Brunswick sat back and just worried about?

A. No, sir. It was recorded on the balance sheet and was followed for collection.

Q. Was it in fact handed over to CIT?

A. To the extent that we had borrowings from CIT, yes, we would have directly assigned that as security. It wasn't handed over to them.

Q. So you kissed it goodbye to CIT for all practical purposes, didn't you?

A. We did not.

Q. What was the extent, what was the extent that CIT took over the debt?

A. The—part of our agreement with CIT Corporation was that we would borrow on a certain percentage of the pinsetter receivables——

[2520]

Q. Don't you remember what that percentage was?

A. Yes, I do.

Q. What was it?

A. It was an effective 56 per cent.

Q. Not 60?

A. No.

Q. And you say an effective 56 per cent, what do you mean by the word "effective"?

A. We were required to assign and borrow from CIT on a minimum of 80 per cent of the receivables which we generated, and we could borrow anywhere from 70 to 100 per cent, so the 70 per cent of 80 became effective 56.

Q. Could you do in your head approximately what that 56 represented in dollars in the example we are using of 8100 less the 500, which is $7600 against which 56 per cent, is that approximately, although not by any means exactly, about $4500?

A. Well, it would have been 56 per cent of $7600.

Q. Yes.

A. So it would be somewhere in that——

Q. Somewhere in that range. Tell us, please, what happened to that money, that four thousand or somewhere in the magnitude of four thousand, what happened to that money; how was it used by Brunswick?

[2521]

A. It was used by Brunswick to manufacture equipment, to build buildings for the manufacture of equipment, to finance inventories.

Q. Of all kinds?

A. It was used for their general purposes.

Q. It wasn't limited to the bowling center operations, was it?

A. Use of the money, no.

Q. Used by Brunswick for any purpose it pleased; is that so?

A. Yes.

Q. In Japan it's necessary, or Canada, regretfully that might be——

A. I didn't hear all of your question.

Q. In Japan, if necessary, or in Canada, regretful as that might be?

A. It could have been used for that, yes, but all of the funds were to be used to pay back that loan to CIT were going to come from those receivables.

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[2523]

Q. Is it your testimony, Mr. Barron, that the 1966 loan that involved some 18 banks and insurance companies, is it your testimony that that money was

[2524]

only to be used in BCOD operations?

A. The 1966 rewrite?

Q. Yes.

A. That was to be used by Brunswick in its general course of business.

Q. For any general course of Brunswick; isn't that so?

A. Yes.

Q. Why do you balk at golf clubs; why couldn't it be used for golf clubs?

A. It could have been used for golf clubs. I don't balk at it at all.

Q. Oh, it could? And it could have been used also for a bowling center 20 miles outside of Tokyo, could it not?

A. Could have been.

Q. So far as you know, it was; isn't that so?

A. I don't know specifically what each and every dollar was used for.

Q. But there were dollars spent 20 miles out or somewhere near Tokyo, weren't there, by Brunswick?

A. Yes, and there were dollars generated in Tokyo, too. Perhaps dollars were generated in operations over there.

Q. There were dollars generated by BCOD centers,

[2525]

werent' there?

A. There were.

Q. What is this item of principal on 22 for identification; that's part of this cash need, right?

A. Yes.

Q. To pay back principal?

A. Yes.

Q. To whom, to these banks?

A. Yes.

Q. For expenditures in Tokyo?

A. It was to pay back the loans for which we were obligated.

Q. By "we" you mean Brunswick generally?

A. Brunswick Corporation.

Q. And also according to Exhibit 20 it was to pay back interest; isn't that right, because you have a column for principal and a column for interest and you say the total constitutes cash need for Exhibit 23 for identification; is that right?

A. Right.

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[2528]

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. Now, the Brunswick operated centers, Mr. Barron, did they have any cash need to pay interest to anybody?

A. Brunswick Corporation had cash needs.

Q. Please answer my question, sir.

Does Brunswick operated centers have any cash need to pay anybody?

A. Brunswick operated centers is a part of Brunswick

[2529]

Corporation. It is not a separate entity.

Q. Did the Brunswick operated centers have separate existence in the sense that it had a local manager?

A. Yes, sir.

Q. Did it have a separate existence in the sense that it had a plant, that is to say, a bowling center facility, separate from the central headquarters of Brunswick?

A. Yes, that's right.

Q. Did it have a separate existence in the sense that it had its own league bowling—leagues bowling?

A. Each center had certain numbers of leagues, yes.

Q. Did it have a separate existence in the sense that it had its own physical location on the side of the road somewhere?

A. Each had a location.

Q. Did it have a separate existence in the sense that bowlers came to bowl at these different premises?

A. Each had bowlers.

Q. Did it have a separate existence in the sense that it had facilities different from other facilities for the use by bowlers, that is to say,

[2530]

such things as snack bars, liquor bars and the like?

A. They all had the snack bars and liquor bars, that sort of thing.

Q. Did it have a separate existence in the sense that Brunswick kept separate records for each of these bowling centers?

A. Brunswick kept separate records for each center.

Q. And did Brunswick in keeping these separate records for each of the centers keep track of the expenses of these centers, did those records show expense items?

A. Yes, they did.

Q. And did the expense items which these separate centers had include in among the records anything for the payment of interest, sir?

A. No, sir, I have explained to you that we did not allocate interest.

Q. Can we take the "no, sir——"

Mr. McNeill: I object to the question, of Mr. Hoffmann interrupting this witness.

Mr. Hoffmann: I submit the question calls for yes or no.

The Court: I will permit him to answer, and if I don't think it is responsive I can strike it.

[2531]

(Record read.)

The Court: "No, sir, period."

Overruled. Proceed.

Q. Now, sir, was there any depreciation allocated on the profit and loss statements of the various BCOD centers?

A. Yes, there was.

Q. Could you show us that on D-1 for identification?

A. At the top of page 4.

[2532]

Q. There are entries here, are there not, for depreciation; is that leasehold?

A. That's right.

Q. And the leasehold is what, the lease between the Brunswick center and the landlord; is that what you are talking about?

A. We are talking about leasehold improvements, which would be shelving, counters, that sort of thing, which we would put in and which would remain the property of the landlord after we moved out.

Q. Then you have depreciation of the automatic pinsetters for Interstate Lanes, is that right?

A. Yes, sir.

Q. What does that reflect?

A. This reflects the amount of depreciation charged to this center for the month of December, and on the other side for the 12 months.

Q. Is that based on a calculation as to how long it would take for the pinsetter to wear out?

A. It is based on an estimated useful life, yes.

Q. Do you know, in connection with the center, how long that useful life is supposed to be?

A. We use 10 years.

Q. Then you have deprecation of bowling equipment, is that right?

[2533]

A. Yes, sir.

Q. Once again, what does that refer to, as distinct from the pinsetter?

A. The bowling equipment would be the lanes, and the settees, and the other components—everything that makes up a bowling lane other than a pinsetter.

Q. Do you have a basis for depreciating that in terms of expected life?

A. We use ten years.

Q. You use ten years for the lane, and for the settees, and so on?

A. Yes, sir.

Q. Now, I see depreciation, carpets; what does that refer to?

A. The carpeting in the concourse areas, and in the bar areas, if it has carpeting. And generally that would be depreciated over three years.

Q. That's the expected life?

A. Yes, sir.

Q. And is that a figure that allows for such disasters as liquids being spilled, cigar butts ground into the carpet, and so forth?

A. That's our average experience.

Q. Depreciation, drapes; what does that refer to?

A. Draperies which would be hung in the bar areas or

[2534]

the nursery.

Q. Then there are certain other depreciation items, are there not, office equipment, vending; what is R&B equipment?

A. Restaurant and bar.

Q. This is all depreciated, is that right?

A. Yes, sir.

Q. On the individual records for the particular BCOD center, is that correct?

A. Yes, sir.

Q. Now, we have here another heading, license and tax expenses; are those expenses attributable to this center?

A. Those are expenses for that particular center, yes.

Q. One of the costs of the center is the licenses and tax, is that right?

A. That is correct.

Q. And so with these various state franchise tax and property tax, is that right?

A. Yes, sir.

Q. Those are expenses chargeable to each of the centers, is that your testimony?

A. Yes, sir.

Q. Below that there is an area that says

[2535]

insurance, fire insurance and total insurance; those are costs, are they not, of the operations of this center?

A. That is correct.

Q. Then finally you have a total fixed expense, do you not?

A. Yes, sir.

Q. Those are expenses for this center?

A. Yes.

Q. And then you have payroll expenses?

A. Yes.

Q. Those are the people working there, is that right?

A. That's correct.

Q. They are paid by the center?

A. They are paid from Chicago. They are people actually working in that center.

Q. It is a cost for that center?

A. Yes.

Q. You have a total for that?

A. Yes, sir.

Q. Then you have various other expenses broken out, don't you, in addition to payroll, payroll for waitress, payroll for clerks, employee benefits, union pension, employees' meals, insurance other, Workmen's

[2536]

Compensation, traveler meetings, entertainment, regional manager meeting, all of these are costs, are they not, attributable, in this instance, to the center called Interstate Lanes?

A. That is correct.

Q. And it is not just these big items, is it; to get down to janitorial contracts, that's for janitor, is that what it is?

A. That would go into that category.

Q. Is that a cost and expense?

A. Yes.

Q. Then you have pest control; that's an expense?

A. Yes, sir.

Q. And a fire extinguisher, that is an expense?

A. Yes.

Q. Garbage collection, is that right?

A. Yes, sir.

Q. Then we go down to smaller items than that; small tools, that's an expense?

A. Yes, sir.

Q. And many, many items, would you agree, are listed here—I am looking now at page number 6 of the Interstate Lanes P&L statement—such items as bar equipment, refrigerator equipment, and the like, is that

[2537]

correct, these are all broken out here, as costs of the center?

A. Those are maintenance costs, right.

Q. And so, too, supplies of all kinds?

A. Yes, sir.

Q. Bowling, billiard, rug supplies, lighting supplies, nursery supplies, these are all costs, is that so?

A. That is correct.

Q. That is not all. There are things like laundry, utilities, communications expenses, outside services, sales tax—you agree that I am reading items that are on this list?

A. Yes, sir.

Q. These are all costing items, is that right?

A. That is correct.

Q. Then you get down to advertising and promotions, junior shirts, newspaper advertisements, magazine advertisements; all of these are costs, are they not?

A. Yes, sir.

[2538]

Q. And there are many, you agree, that I didn't read, paging through this exhibit?

A. Yes.

Q. This exhibit for identification.

Now, sir, you also show here the revenues, don't you?

A. Yes, they are shown there.

Q. For each center—for this center, in this instance?

A. Yes, sir.

Q. Who created the structure for what should be on that profit and loss statement, who decided?

A. The operating management of the bowling centers, along with——

Q. Did that include you?

A. —along with the comptroller's office.

Q. Does that include you?

A. I have been a part of changes to it. I was not controller of that operation at the time it started, but I have supervised it and have been in on changes that have been made since it started.

Q. Now, sir, these various expenses that I read off to you, these are costs, are they not?

A. Yes, sir.

Q. Was there a single item on this exhibit

[2539]

which reflects interest as a cost of doing business for this center, in this case, Interstate Lanes?

A. No, we did not allocate interest charges to the centers.

Q. And can you tell us whether or not in Exhibit 23 for identification, which is the Brunswick cash needs allocated to BCOD centers for 1965 to 1975, you have allocated interest for these centers, does that cash need include cash for interest?

Mr. McNeill: I don't think the witness has a copy of these in front of him. May I?

The Court: Give them to him.

(Documents handed to the witness by Mr. McNeill.)

A. The interest expenses shown on Exhibit 20, and 22, and 23 are the amounts that would have been allocable to a BCO center if we were to have gone through that kind of a calculation in 1965.

Q. In that regard, you didn't do it in '65, did you?

A. No, sir; we did not.

Q. And why was that?

A. Because for administrative purposes Brunswick policy is to hold the Treasury Department responsible for borrowings. The Treasury Department makes the

[2540]

borrowings, they conduct the negotiations with the lenders, and arrive at whatever the rates of interest are.

The bowling center operations people have no control over borrowings. And for that reason, we did not make an allocation to them, for administrative purposes. The

amount of interest has nothing to do with the effectiveness of a bowling center manager.

Q. Can you tell us, sir, in putting down this figure for interest on these exhibits, what it was that you did, how did you come by that factor?

A. Well, the first thing we did was to identify certain specific loans which Brunswick had, which we knew were related to the bowling equipment receivables.

Brunswick had many loans outstanding, not all of which related to bowling. We eliminated those. These were foreign borrowings, real estate mortgages for plants in other operating divisions. We eliminated those loans before we started.

Q. When you speak of eliminating those loans, are you referring to some specific kind of loans?

A. A loan in Canada, or Europe, or a loan for a plant in Georgia for the MacGregor Division.

[2541]

Q. Did the bulk of Brunswick's borrowing have strings attached; in other words, did the bank state to you, "Brunswick, you may only use this money for a particular purpose"?

A. No, sir.

Q. You didn't eliminate the general loan, did you?

A. No, sir.

Q. What specific loans were there that had strings attached that would prevent your using the money from bowling or from bowling operations?

A. Well, generally the real estate loans would fall into that category.

Q. What were those, loans for the purchase of real estate somewhere?

A. Yes.

Q. You are not talking about domestic bowling centers now, are you?

A. No.

Q. Purchase of real estate in foreign countries and in the United States as well?

A. Yes.

Q. There you had specific loans; is that right?

A. Yes. And those are the ones that we eliminated from our determination.

[2542]

Q. Those are the only ones, aren't they, that you eliminated from your determination?

A. No, sir, there were others. There was a debenture issue outstanding which if we—I think there might have been some justification for including that. It was issued at the time of the increase in bowling business. We did not put that in this calculation.

The ones that we put in here were the ones that the loaners looked specifically to the receivables for their security.

Q. How much are we talking about when we talk about the total amount of Brunswick loans or indebtedness in 1965?

A. At the end of 1965, the total notes payable on long-term debt was 285 million. However, the basis for this exhibit is 1964.

Q. There was $285 million outstanding; is that right?

A. At the end of 1965.

Q. How much outstanding at the end of 1964?

A. At the end of 1964 there was $314,442,000.

Q. That's a bigger figure, isn't it?

A. Yes, sir.

Q. How much did you take away from that $314 million to accommodate these special loans that

[2543]

you spoke of?

A. Approximately $71 million.

Q. So you took off the top, and that's way up high, isn't it, on one of your visual charts, $314 million, you took off the top 71 million; is that what you're saying?

A. I don't believe we showed a chart—

Q. I am making up one, I can see it, so can you, I hope, $314 million, a big bar like that, isn't it, and then up here you have taken off $70 million from that for special loans; is that what you did, and you are left with about $240-some million?

A. Yes.

Q. That $240 million, sir, that's what the BCOD centers are paying interest on or a part of that?

A. That is the total amount of loans which related to bowling. The part that was allocable to BCOD centers actually came down to 24 million, approximately 10 per cent.

Q. What was the loan situation as it existed in 1959, if you know?

A. I don't have that number available.

Q. Do you know approximately how much?

A. I would not know.

Q. How about 1958, do you know approximately how

[2544]

much?

A. I do not know.

Q. Anywhere near 200 million?

A. I don't know.

Q. You don't know one way or the other?

A. I don't have the number available.

Q. Couldn't you give it to us within a tolerance of 20 per cent error?

A. I don't have the number available.

Q. You don't have it in your head?

A. No.

Q. When, if you know—I withdraw that.

What was the business that Brunswick was in in 1958?

A. 1958 we were in the bowling business, we were in the school equipment business, in sporting goods, MacGregor.

Q. Anything else?

A. Bowling was by far the largest piece of that.

Q. Did there come a time when Brunswick went into other businesses?

A. Yes, sir.

Q. When was that, sir?

A. Well, we subsequently acquired Mercury Motors.

Q. In 1958 did you acquire MacGregor Sports

[2545]

Products?

A. It was approximately at that time.

Q. And in 1959 did you acquire hospital supply companies, surgical supply companies, hunting equipment, and also another sporting goods manufacturer named Royal?

A. Those are companies which we acquired, yes.

• • •

CROSS-EXAMINATION.

By Mr. Hoffmann:

• • •

[2615]

Q. Was there ever a BCO division of Brunswick?

A. Yes, there was.

Q. When did that begin?

A. That began, effectively, January 1965. It was being organized in late '64.

Q. What was the purpose of it?

A. The purpose of it was to evaluate bowling centers which were indebted to Brunswick Corporation, which could not or would not, for some reason or other, pay their installment obligations to Brunswick, and this activity was organized to review those establishments, to see if it would be feasible for them to be operated, and if it were, that Brunswick would have a chance to recover some of its investment in this large portfolio of notes receivable.

Q. Along with this rather elaborate purpose,

[2616]

did it also have the purpose of operating those centers?

A. Where it was deemed feasible; yes, sir.

Q. So it would evaluate and it would operate, was that its purpose?

A. Yes, sir.

Q. Did it also have the purpose of acquiring bowling centers?

A. You would have to acquire them in order to operate them, yes.

Q. And how about the building of new bowling centers, in 1965, when BCO was formed, did it include among its purposes the building of new bowling centers to be operated by Brunswick?

A. At the time it was organized, it was not foreseen that that would be a part of the bowling center activity.

Q. When did it become foreseen?

A. Well, I believe it was about in 1969 or '70 that the Sales Department and—well, it actually was just the top division management—had determined that there were many good locations available around the country where,

in their opinion, the market would support a new bowling center. The Sales Department was out looking for prospective investors to enter into contracts, get them interested in establishing a bowling center——

Q. I hate to interrupt you, but is all this

[2617]

answering my question of: When was it foreseen?

A. Yes.

Q. Can you include in your answer the year in which that happened, or have you done so?

A. As I said, I thought it was 1969 or '70—1969 probably.

Q. 1969. And was——

Mr. McNeill: Would you like to finish your answer, sir?

The Witness: It was 1969.

Mr. McNeill: I mean your earlier answer was——

The Court: Mr. McNeill, please. Overruled. Next question.

Q. Mr. Barron, did there come a time in which the BCOD, or the Bowling Operating Division of Brunswick, acquired bowling centers which involved AMF equipment, and the use of that equipment?

A. We have a program within the bowling center operations activity for providing management services,——

Q. Did there come such a time——

A. —and we——

Q. —is my question.

A. We did manage some centers with AMF equipment.

Q. Didn't you do more than just manage centers

[2618]

with AMF equipment, didn't you acquire such centers?

A. In connection with that program there were some owners who, rather than operate on a straight management contract——

Mr. Hoffmann: I am asking you a question—your Honor, may I have this witness instructed to answer it yes or no.

The Court: Mr. Barron, answer the question.

Repeat the question, please.

Listen to it carefully. And don't volunteer any information, Mr. Barron. If you don't understand it, say, "I don't understand it."

(Question read as follows:

"Question: Didn't you do more than just manage centers with AMF equipment, didn't you acquire such centers?")

The Court: Answer both questions yes or no, if you can.

A. Yes, we leased some.

Q. Is that acquired? My question is: Did you acquire such centers?

A. In that context, yes, you can say we acquired.

Q. Can you name any such centers that you acquired —which you, Brunswick, acquired, which involved the use of AMF equipment?

[2619]

A. Not offhand; no, sir.

Q. If I put to you the name of one such center—does Rahway, New Jersey, mean anything to you?

A. I know that we have been operating a center there, but I don't know what kind of equipment it has.

Q. Now, sir, was it one of the functions of BCOD, starting in 1965, to sell bowling centers which it had acquired?

A. It was the company's policy to make these centers available for sale. The BCOD organization did not sell them. They were sold by the bowling sales organization.

Q. And what was that called?

A. It was called the Bowling Division.

Q. Now, sir, do you know of any such sales taking place during the year 1965?

A. No, sir; none were sold in 1965.

Q. During the year 1966? Can you answer my question without looking at any notes?

A. Without looking at a reference, I can't tell you, no.

Q. You don't know one way or the other. Do you have notes that would show the answer to my question?

A. I have notes that show some centers that were deactivated and I know that some were sold.

Q. Do you have notes which show which were sold?

[2620]

A. No, sir.

Q. You distinguish between deactivation and sales, don't you?

A. Not within the BCO organization.

Q. Where do you make that distinction?

A. We would do it—to determine the ones sold, we would go back and analyze our sales records.

Q. Is there any difference in your mind between deactivation and sale?

A. As it relates to the BCO activity, there is no difference.

Q. You put both words down on your charts, don't you, deactivation and sales; are you now saying that where your chart shows deactivation and sales that it is the same thing, that it means one and the same thing?

A. Yes, sir; as far as BCO activity is concerned, they are.

Q. Now about those notes that you have, do you differentiate between sales and deactivation there, the notes you just referred to?

A. No, sir; they are all listed as deactivation.

Q. Do you have any way of telling us here and now, in 1973, what centers, if any, were sold by Brunswick?

A. I can think of some. I don't know the particular

[2621]

years.

Q. Well, sir, is there any record that Brunswick keeps that shows what it sells, what centers it sells?

A. Yes, sir; there are such records.

Q. There would be some kind of a transaction file, wouldn't there?

A. Yes, sir.

[2622]

Q. We are talking about matters that could involve a half million dollars, or more, are we not?

A. Yes, sir.

Q. You have a record somewhere, do you not?

A. Yes.

Q. But you don't know about that?

A. I don't have it with me. I could obtain it.

Q. But you have notes about deactivation?

A. Yes, sir.

Q. Is there anything else you lump with deactivation besides sales?

A. Casualty losses, fire.

Q. Anything else?

A. No, those are the main ones.

Q. Do you know anything about Brunswick having set forth in 1965 a salvage policy in respect of acquiring centers?

A. Yes, sir.

Q. Would you define that policy for us, as you remember it?

A. The reason that Brunswick entered into the operating activity——

Q. Would you please tell us what the policy was, not the reason; the policy, if you know. If you don't know, that's an answer.

[2623]

A. I don't understand your question.

Q. Did Brunswick have, in 1965, when it set up the BCOD division, a policy concerning the sale of centers owned or operated by BCOD?

A. Yes, it did.

Q. What was that policy, if you know?

A. That policy was that every one of these centers were available for sale to qualified purchasers.

Q. Is there anything about the price in the policy, as you understand it?

A. I don't know that the price was in the policy itself. There was a formula for setting price and it was based on the operating results.

Q. Do you have among your papers Brunswick Exhibit 7?

A. Yes, sir.

Q. Would you be kind enough to bring it out? If you don't have it, I can supply you with it.

A. Do that, please.

(Handed to the witness by counsel.)

Q. Would you be good enough to look at the caption, sir? If you find it necessary to refer to any other documents in answer to my question, would you be kind enough to call it to my attention, please?

A. Sure.

[2624]

Q. You are looking now at Brunswick Exhibit 7, are you?

A. Yes, sir.

Q. The number of bowling centers BCO commenced operating, the number disposed of by sale, lease or deactivation by BCO, 1965-1972 in the United States.

Who prepared this exhibit?

A. This was prepared in our accounting department.

Q. Under your supervision?

A. Yes, sir.

Q. Did you play an active role in its preparation?

A. I played an active role in the supervision of the people who gathered information, yes. I didn't physically do it myself.

Q. Do you know what records were used in compiling these figures?

A. These were the records of the centers operated by BCOD.

Q. Now, then, be good enough to look at 1965. Do you see a heading "Commenced operating 124"?

A. Yes, sir.

Q. What does that mean, is that the total number of centers which BCOD began to operate in that year?

A. Yes, sir.

Q. Then you disposed of zero, do you not?

[2625]

A. Yes.

Q. And you see net transfers, 124. Did I understand you to testify the other day that by that transfer you mean a transfer within the Brunswick organization?

A. That is correct.

Q. A transfer from whom to whom, from where to where, from which to which; who transferred to what?

A. The Installment Credit Department did the actual legal repossession of the equipment in the center and it is transferred to Bowling Center Operations Division for operation.

Q. Brunswick is one big company, isn't it, with an Installment Credit Department, and a bowling operation division, and other things; why was it necessary that there should be a transfer from one part of this big company to another part of this big company?

A. Because the Installment Credit Department had certain responsibilities regarding the accounts and the bowling center operations group was another function which had responsibilities for operating bowling centers. There were two different areas of responsibilities.

Q. Did they keep separate books?

A. Yes, sir.

Q. These departments, the Installment Credit

[2626]

Department——

A. Beg pardon?

Q. Did the Installment Credit Department have books separate from those kept by BCOD?

A. Yes, sir.

Q. What did this transfer look like, was it a piece of paper of any sort?

A. There were transfers, yes. We call them interoffice vouchers, and the information relative to the centers, the number of equipment repossessed and turned over to BCOD were recorded on these interoffice journal vouchers.

Q. Wouldn't that piece of paper show a value for the centers?

A. It would show the value for the equipment in the house, in each individual house, yes.

Q. The equipment?

A. Yes, sir.

Q. How about the center itself; this is a transfer of a bowling center, isn't it?

A. It was a transfer of the equipment only.

Q. Well, how did the bowling center get into the hands of BCOD, if it did? First may I ask you, did the bowling center get into the hands of BCOD?

A. Yes, sir.

[2627]

Q. How did that happen?

A. Well, when BCO evaluated a house, and made a decision that it was feasible to operate it, they would negotiate with the landlord to obtain a lease, they would negotiate with the owner of the chattels to either buy them, or rent them, to continue to operate them, and then the equipment came from the Installment Credit.

Q. Would they negotiate for assignment or transfer of the liquor license?

A. Yes, sir.

Q. Who would do that?

A. They would do that through——

Q. Who would do that?

A. The people in the bowling center operations group.

Q. And then how would it get from bowling center operations group to the operating division, BCOD?

A. They are simultaneous. They are the same thing.

Q. But the Installment Credit Division is different, is that it?

A. Yes, sir; that was a separate group of administrative people.

Q. Now, did the bowling center operations group pay for any of this on the records of Brunswick?

A. In cash; no, sir.

Q. I didn't ask you in cash. Did they pay in

[2628]

any way?

A. They paid in terms of setting up intercompany accounts for the amounts being transferred back and forth, yes.

Q. Would there be an account for BCOD which would show the amount transferred for—I'm sorry—which would show some form of payment for a center transferred to it?

A. There would be an account with the bowling division, or with the corporate office, for the value established on the books at the time of the transfer.

Q. We are talking now of the center, aren't we; we are not talking about the installment division handing over the pinsetters, we are now talking about the center, is that right, is that what your answer is addressed to?

A. Yes, sir.

Q. And that has to do with such matters, say, as the liquor license, doesn't it?

A. Yes, it would.

Q. Do you have any idea of how much a liquor license costs, let's say, on the average for these centers?

A. In some places it doesn't cost anything, in other places it costs up to several thousand dollars.

[2629]

Q. Would you say up to $50,000?

A. I don't have those specifics. I don't know.

Q. You said several thousand dollars. Where did you pick that number from?

A. Well, I know that in the State of California, for example, it is necessary to purchase a license from an existing holder.

Q. Do you know what the cost of that is in California?

A. It is assigned by the State Liquor Commission and it is ten thousand, or fifteen thousand dollars is not unusual.

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[2631]

Q. Now, sir, coming back to Brunswick Exhibit 7, I believe you still have the copy which I gave you before the recess?

A. Yes.

Q. Were there any transfers made by any divisions to the BCO centers other than what you talked about, that is to say, other than the Brunswick Installment Division, in connection with the acquisition of bowling centers?

A. There were no centers that were built by Brunswick. Those would be in the——

Those would be in the Commenced Operating category, and also in the net transfers.

Q. Do you know how many of those there were?

A. I don't know the exact number. It was about seven or eight.

Q. Now, sir, when there was a transfer to BCO and you did open a page on your computer machine for

[2632]

P&L for the BCO center, was there any asset listed as a

result of the transfer under the—on the page for the particular bowling center?

A. The assets are a part of a balance sheet, sir.

They would not be listed on the P&L statement.

Q. Was there any individual balance sheet for the individual bowling center which showed the assets of that center?

A. We could construct one from our records.

Q. Would you please answer my question, sir?

Was there, is my question.

A. We do not prepare——

Mr. Hoffmann: Your Honor, may I have an answer to my question?

The Court: Why can't you answer the question?

The Witness: I'm trying to.

The Court: You're not.

Please read it back.

(Record read.)

The Court: Can you answer that? Was there?

The Witness: No.

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[2635]

Q. How do we know, then, how many centers were sold or leased or deactivated by BCO by reference to Brunswick Exhibit 7; can you tell us that?

A. Brunswick Exhibit 7 groups them all in one category.

Q. It groups more than the centers; isn't that your testimony, you just said it throws in there the machines that were separately leased or equipment that was leased, not the centers?

A. Brunswick Exhibit 7 shows the number of centers that were disposed of by BCO, and if the equipment in those centers was leased to a customer it is included in here as a disposition.

Q. Now, sir, when you say "deactivated," do you mean the same thing as leased?

A. Deactivated means a center which BCO stopped operating.

[2636]

Q. For any reason?

A. It would include those subsequently leased.

Q. Would it include all centers which BCO stopped operating?

A. Yes, sir.

Q. Regardless of what happened to the center; is that right?

A. Yes.

The Court: Would it include 20 pinsetters that were taken out of a center and the center deactivated, and those 20 pinsetters leased to Mr. Jones in Peoria, Illinois?

The Witness: If Mr. Jones took over the entire center, yes.

The Court: Listen to my question.

Would it include X center, now it is deactivated, they take 20 pinsetters out of that center, "they" meaning Brunswick, and they lease them to Mr. Jones in Peoria, Illinois, just the pinsetters; would that be included in this?

The Witness: No, it would not.

• • •

[2641]

Q. Is it not possible for us to just talk about one at a time on this chart?

A. All right. Well, they are all grouped in one column.

Q. You have the word "sale" first; is that right?

A. Yes.

Q. Now I'd like to talk about sales. Will you play this with me, will you go along with me and just talk about sale? We will forge for a moment "lease"

[2642]

and we will forget "deactivation"; is that agreed?

A. That's fine.

Q. Does this heading, I am asking it, I think for the third and possibly the fourth time, does this heading under the word "sale" refer to the number of bowling centers BCO commenced and operated and later sold?

A. Yes, it does.

Q. And is that all it refers to?

A. The word "sale"?

Q. Yes.

A. Yes.

Q. And it has nothing to do with including, does it, it is—that's what it is, it is the sale of centers; is that right?

A. Yes.

Q. It is not referring to sale of anything else but centers, is it?

A. That's right.

Q. Not referring to the sale of particular machines or equipment, but the whole center; isn't that your testimony?

A. Yes.

Q. Now, "lease," what is meant by "lease," separate from "sale," separate from the other words?

[2643]

A. Well, as I explained, there were some centers that BCO operated, subsequently stopped operating, and in which equipment was leased to third parties.

Q. And that's not centers you're talking about; is that right? You say the equipment was leased to third parties, you're not saying the centers were leased; is that right?

A. That's right. But BCO stopped operating the center.

• • •

[2647]

Q. Do you differentiate deactivation from lease?

A. Yes, sir.

Q. What is the difference?

A. Deactivation means removal of equipment, taking it out of the bowling center completely.

Q. And do you differentiate deactivation from sale?

A. Yes, sir.

Q. What is the difference?

A. A sale is a sale of the going operation.

Q. Does that include the machinery when you sell the going operation?

A. Yes, sir.

• • •

[2649]

Q. Now, sir, in respect to sales, if we wanted to find out what Brunswick got from sales, first we would have to know, wouldn't we, what centers were sold?

A. Yes, sir.

Q. You don't know that, do you?

A. I don't know them exactly. I could look it up.

Q. Well, you said that the other day. You said you could call Chicago maybe and find out. Wasn't this prepared by you or people working for you?

A. Yes, it was.

Q. Did you ask them to find out what happened to the sales?

A. I asked them to find out for me which centers were disposed of by sale, or by lease, or deactivation. I didn't ask them to segregate them.

Q. You weren't interested in what Brunswick got back from these sales, and other dispositions?

A. That had nothing to do with the preparation of this chart.

Q. Did it have anything to do with the preparation of any of the charts that you put in evidence?

A. No, sir.

• • •

[2653]

Mr. Hoffmann: I am looking at Exhibit 8. It is not quite the same as 7. But it shows the number of centers operated at the year end for the various years, and the net transfers.

(Exhibit 8 placed on easel.)

By Mr. Hoffmann:

Q. You only could remember one sale, is that right, when you testified about this the last time?

A. Yes.

Q. And you know the name of that company?

A. I believe that was Cabrillo Lanes.

Q. Cabrillo Lanes. Do you know of your own

[2654]

knowledge whether or not any other Brunswick center was ever sold by Brunswick?

A. Yes, sir; I know of my knowledge that several were sold, but I don't specifically know their names.

Q. Do you know when that happened?

A. In the last several years. One that was sold was in Twin Falls, Idaho——

Q. Well, in the last several——

A. —in Orlando, Florida——

Q. Do you know any sold in 1967?

A. I don't know them specifically by year, none of them.

Q. Well, you said in the last few years.

A. Several. I said in the last few years, yes.

Q. What do you mean by few, more than 15, or 20?

A. In the period 1966 to 1972.

Q. In the last six years, is that what you mean?

A. Yes, sir; seven years.

Q. So that when you come to these items, disposed of, '66, '67, '68, '69, '70, '71, '72 you know that several or a few were sold.

A. Yes, sir.

Q. And you don't know exactly how many or when, is that right; is that your testimony?

[2655]

A. That is correct.

Q. And if I suggested to you that up to 1970 the total number was 2, would that seem out of line in any way?

A. I couldn't quarrel with you one way or the other.

Q. But you think there have been more in all, in the whole period through '72, is that right?

A. Yes, sir.

Q. Up to a few. Could you pinpoint a few, tell us just what it is; it is more than two, isn't it?

A. Yes.

Q. Can you give us a number, about?

A. I gave a number of about 7 or 8.

Q. Do you hold to that; is that what you think is the accurate number?

A. I think it is close to that. I don't know the exact number.

Q. It could be less?

A. It could be less, could be more.

• • •

[2658]

Q. Now, Exhibit 7 becomes Exhibit 8, is that right, the data from 7 is used on 8, is that right?

A. Yes, sir.

Q. This shows the number operated at year end, doesn't it, by BCO for each of those years, that's the point of the green line?

A. Yes, sir.

Q. This heading here, net transfers of centers to BCO for operation, are those all transferred from one source; where it says net transfers to BCO of centers, to BCO for operation, the bottom part, the blue part of the graph.

A. It would be those that were transferred by way of repossession or those that were transferred by way of building new centers.

Q. When there was a new center built, did it then get transferred on the books and records of Brunswick to some BCO division, is that what you are saying?

A. Yes, it was recorded in the "Commenced Operating" category.

Q. And did that BCO center pay anything to Brunswick for the new center—for getting the new center transferred to it?

A. It recorded the transaction with the bowling

[2659]

Division office for the value of the assets, yes.

Q. Who is the "it" we are talking about now?

A. The bowling center operation's assets were recorded and an offsetting credit to the sales group.

Q. Was the bowling center required to pay any branch of Brunswick out of its receipts for the cost of building the new center?

A. It was assessed a rental charge.

Q. Was the rental charge deducted from the operational income of the BCO center that operated the new center—or was the new center?

A. Yes.

Q. Was anything similar to that done when the 124 centers, which you started operating in BCO in 1965, were placed on the books of BCO?

A. There was a charge for the assets as recorded and a credit to the—at that time the Installment Credit Department, for that reserve. And those centers paid their own rents, that is—

Q. When you say—

A. —the rents were paid for them and they were charged to them. They didn't pay their own bills.

Q. When you say "paid their own rents," you mean rents, now, for the use of the real estate; is that what you are talking about?

[2660]

A. Yes, that is correct.

Q. But they didn't pay rents for the use of automatic pinsetting machines, did they?

A. No, sir.

Q. Or for lanes, isn't that so?

A. No, sir; they were charged the depreciation on them.

Q. Just that.

A. That's right.

Q. And that depreciation is not something you actually pay over, is it?

A. No, sir.

Q. It is a bookkeeping entry, isn't that your testimony?

A. That is correct.

• • •

[2672]

Q. Mr. Barron, in relation to 20 and also the charts which are 22, 23, which according to your testimony pick up the information from 20, you put down principal and interest for the years 1965 through 1975; is that right?

A. Yes.

[2673]

Q. Have you also made an effort to put down the various sources of income flowing into the Brunswick company during that period?

A. No, I did not.

Q. Would you be good enough to—

Mr. Hoffmann: May I have back what I gave you before? That would include 7, I think.

Thank you.

Q. Would you take a look, please, at Plaintiffs' Exhibit 32. Plaintiffs' Exhibit 32 is the BCOD consolidated summary, domestic operations only.

Do you notice the bottom line is called cash flow, is it not?

A. Yes.

Q. And this cash flow is negative, that is, a losing quantity for 1965; isn't that right?

A. Yes.

Q. But there afterwards in 1966, 1967, 1968, 1969, 1970, 1971 and 1972 there is a total of all on the plus side; is that right?

A. Yes.

Q. That means, does it not, that Brunswick's consolidated summaries for its domestic centers showed that there was a positive cash flow flowing into Brunswick; isn't that right?

[2674]

A. That's right.

Q. And that on Plaintiffs' Exhibit 32 runs from 986,000 on the positive side in 1966 upwards each year, in 1967 it is over a million, in 1968 it is close to two, in 1969 it is close to three, in 1970 it is over four, 1971 it is over six, and in 1972 over eight million dollars; is that right?

A. Yes.

Q. Was any of this money, any of this positive cash flow used to pay off the debts of Brunswick?

A. It went into Brunswick's general funds from which the debts were paid.

Q. Did the funds go to the fellow who loaned money to Brunswick?

A. It all went into Brunswick's general funds, it lost its identity when it got there, and Brunswick paid the bills.

BCOD Division did not pay the interest or the principal. That was handled by the treasury department——

Q. But it sent the money back into other Brunswick—to pay the bills?

A. It went into the corporate treasury, yes.

Q. Those bills were paid, weren't they?

A. Yes.

Q. The loan, the principal was retired from

[2675]

time to time and the interest was paid; isn't that true?

A. That's true.

Q. And wasn't this positive cash flow used for that purpose?

A. It could have been. We didn't keep our records—the exact tracings of the dollars.

Q. Don't you know whether or not it was?

A. It went into the general funds of Brunswick Corporation.

Q. $8 million just disappeared there in 1972, you know where it went out, don't you?

A. It went out for all sorts of things.

Q. But one of the things was the payment of debts; isn't that so?

A. Brunswick's general treasury funds paid their debts, yes.

Q. These are the debts which were involved, are they not, in Plaintiffs' Exhibit 20, which as reference to principal and interest; is that right?

A. Yes.

• • •

[2684]

Q. Was each one of the centers valued and did—I'm sorry—was each one of the centers valued for the purposes of these vouchers?

A. At the time it was commenced operating by BCO.

Q. At the time when Brunswick handed over to BCO a voucher?

A. Each center had a specific value, yes.

Q. How was the value ascertained?

[2685]

A. It was ascertained by determining the installed cost of the equipment in that particular house, at the time of the installation originally, and depreciating that value down to whatever the value was at the time of takeover.

Q. When you say depreciating, did the equipment get credit for payments which were made on it?

A. It was based on installation costs less depreciation.

Q. Well, was there a subtraction made from the number for the down payment that was made?

A. No, sir.

Q. Was there a subtraction made from the number for the payments subsequently made before the equipment was repossessed?

A. That had no bearing on the calculation.

Q. What was the calculation designed to show?

A. The calculation was designed to show the depreciated value based on initial installed cost.

Q. You are speaking now of value, you are speaking of the value of the equipment, isn't that right, the pinsetter, the lane; is that right?

A. That's right.

Q. Did these vouchers which supposedly reflect the value of the center include the value of the good

[2686]

will, the value of the—the value of the good will?

A. It is doubtful if there would be any good will in a center that was being repossessed.

Q. Sir, good will has something to do with patronage, doesn't it, with people coming to the center; isn't that right?

A. That would be a factor.

Q. It is doubtful that you would reopen the center if nobody was coming there.

A. We reopened it on the basis that somebody would rehabilitate it.

Q. You thought there would be customers coming in and bowling?

A. We thought we could build up the customers in the establishment there.

Q. Didn't you also think that you could hold on to the customers that already existed in the establishment?

A. We hoped to.

Q. You say that's got nothing to do with good will?

A. I say that good will is an excess value over whatever you acquire.

In my opinion there would be very little good will in a house that was repossessed after losing money.

[2687]

Q. You mean because the poor proprietor was unlucky enough to have his equipment repossessed; is that what you mean?

A. Because the proprietor didn't pay his bills and because he had run down the business.

Q. He didn't pay his bills. How do you know he had run down the business; you don't know any such thing, do you?

Why are you saying it here and now?

A. Because that's been my observation of the evaluations that I read.

Q. Is it your testimony that the many centers acquired by Brunswick from proprietors and other sources had very little patronage at the time of the acquisition?

A. It is my opinion that the centers that were acquired by BCO were poorly patronized for the most part and had no good will.

[2688]

Q. You closed down a lot of centers, didn't you, never bothered to open them up, isn't that right?

A. That is correct.

Q. Didn't you reach a decision as to why you closed them down?

A. Yes, we did.

Q. What was the reason for closing them down and not bothering to operate them?

A. Because we didn't think they could be rehabilitated.

Q. Now, another way of saying that, you didn't think there was enough business there, isn't that right?

A. Either there wasn't enough business or there wasn't enough that could be generated, yes.

Q. Out of these centers that you acquired, you closed down some and you decided to operate some, isn't that so?

A. That is so.

Q. As to the ones which you operated, didn't you think there was business there, enough business to warrant operating the centers?

A. Either enough there or enough that could be generated, yes.

Q. And some of the values would include the location, would they not, of the center; wouldn't that

[2689]

be one of the reasons why you decide to maintain it, because it is in a good location where customers might come?

A. Yes, sir.

Q. And another might be the condition of the center, isn't that so, cleanly kept, nice equipment; wouldn't that be so?

A. That could be a consideration, yes.

Q. That would have been a factor in deciding whether to maintain it?

A. Yes, sir.

Q. Another might be the number of leagues committed to the center, or which Brunswick thought might be committed in the future, wouldn't that be so?

A. That would be a consideration.

Q. Did any of these considerations you just mention have anything to do with good will?

A. Yes, sir.

Q. That is good will, isn't it?

A. How would you put a value on it?

Q. That is good will, isn't it?

A. Those are considerations in establishing good will.

Q. Now, sir, in connection with the matter of interest which you have in your chart, in Exhibit 20, assigned to these centers, this interest was in payment

[2690]

of loans that Brunswick made, wasn't that your testimony?

A. This was in payment of loans which Brunswick had outstanding.

Q. And some of those loans were secured loans, is that right?

A. Yes, sir.

Q. And by "secured" we mean having some property behind them; is that the meaning of secured, in your mind?

A. Yes, sir.

Q. Those secured loans, did they have behind them the property of the bowling centers?

A. They had the equipment behind them.

Q. And some were unsecured loans, is that right?

A. Yes, sir.

Q. And those unsecured loans, they had no specific equipment assigned to them, isn't that right?

A. That is correct.

• • •

[2694]

Q. I would like to show you a copy of the annual report of Brunswick for 1965, and I address your attention to page 7.

• • •

[2696]

Q. "Additions to plant equipment and leasehold improvements total $31,517,000, 1965, an increase of $19,644,000 over the 11,873,000 expended during 1964.

Most of this increase resulted from the transfers of repossessed bowling equipment, from installment notes receivable, and inventories to Brunswick-operated centers. These transfers did not require any outlay of cash."

Sir, I read that correctly, didn't I?

A. Yes.

Q. What is meant by this sentence, "The transfers did not require any outlay of cash"?

A. The corporation had already recorded assets on its balance sheet for certain equipment notes receivable and inventory items, and these items were the items that were referred to.

The cash outlay came at the time these items were manufactured and installed.

[2697]

Q. Yes, that could have been anywhere back in the '50's; isn't that right?

A. It extended back into 1957.

Q. "These transfers did not require any outlay of cash"; does that mean, sir, that no cash was allocated to any of the BCOD centers?

A. No, sir, it does not.

Q. What does it mean in that regard?

A. It means that this particular transaction recording assets on the BCO books of account did not require cash.

Q. You set up records, didn't you, for the BCO centers, the records we talked about for the last couple of days, the profit and loss statements, the printouts?

A. Yes.

Q. All sorts of cash expenses and costs were indicated, weren't they, on those statements?

A. Yes.

Q. In any of this cash that's referenced here, any of this reflected in any way on those profit and loss statements?

A. Asset values are not stated on a profit and loss statement. They are stated on a balance sheet.

Q. You didn't have any asset value sheet, did

[2698]

you, for a BCO center?

A. For each individual center, no. For the division as a whole, we did.

Q. But not for each center?

A. No, sir.

Q. You didn't have any of this, then, allocated to any individual center, did you?

A. Yes, we did.

Q. I beg your pardon, sir?

A. We did.

Q. Where did that happen?

A. It was on the books of account of the BCO division. We just merely didn't publish a statement on it all of the time.

Q. When you say you had cash allocated to an individual center, what do you mean by that?

A. Its asset value.

Q. Coming back to cash, Mr. Barron, please, t-e reference here is "outlay of cash."

In any of the record keeping of BCO was there an outlay of cash charged against an individual BCO center?

A. This reference in this statement is to the transactions recording the initial set-up of the bowling center operations, and it says that there was no cash

[2699]

outlay involved in these transactions.

Q. Then you are not quarreling with this at all?

A. I'm trying to clarify it for you.

• • •

[2712]

Q. And you know that it was used when combined with funds generated from other sources and was sufficient to finance the company's additions to fixed assets; do you know that?

A. It was in the general corporate funds.

Q. Aha. And do you know it was used to pay State, local and Federal income taxes of $8,753,000; do you know that?

Mr. McNeill: Your Honor, may I object to the form of the question? I'm not sure what the "it" refers to any more. It was used to pay for this purpose or that purpose——

Mr. Hoffman: If you have any doubts, Mr.

[2713]

McNeill, let me reassure you that I'm referring to the money listed on Brunswick's Exhibit 20, in the amount of $24,435,000, which is the portion of loans allocated to all equipment taken over for operation by BCO in 1965. That's the "it" I am referring to.

[2714]

Q. Now, sir, that money was used for taxes generally for Brunswick, was it not?

A. It went into the Brunswick general funds, yes.

It could have been used for——

Q. Used to meet the general operating needs of Brunswick, was it not?

A. It could have been used for anything.

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[2720]

Q. Mr. Barron, when BCO took on a center, if I understood your testimony—we went over this very

[2721]

carefully—when it took on a center, what it did was to arrange to purchase or lease real estate from some stranger, a landlord, or seller of property, isn't that right, it arranged to acquire a premise that included lots of things that had nothing to do with the equipment which had been put on an installment sales contract, isn't that right, the bar, the bar license, the snack bar, the carpeting, and lots of other things that we went through, isn't that so?

A. Yes, sir.

Q. Now, that center that we are talking of, which is a BCO center, that comes into being only when BCO creates it, isn't that right, when it gets the lease?

A. That center came into being the day the equipment was installed and when it was opened for business. That center existed in 1957 through 1965.

Q. When Brunswick installed equipment, did it have any arrangement with the landlord which gave it the right to the real estate?

A. In those years, no.

Q. Did it have any arrangement with the people who supplied the carpeting that if the bowling center operator were to go broke, it, Brunswick, would get the carpets?

[2722]

A. No.

Q. Did it have any arrangement with vending machine manufacturers that if the center went broke it would get the vending machines?

A. No.

Q. Did it have any arrangement relating to anything but the pinsetters and lanes that it sold to this fellow?

A. No.

Q. And yet you say that when Brunswick made arrangements to buy carpets, to buy vending machines, to take over perhaps other men's obligations on such machines, and to get liquor licenses, to install snack bars, to buy or create new bars, to redecorate, to put up a Brunswick sign, and get the real estate, to get the parking lot, that that is what it had from the beginning when it sold the pinsetters and the lanes?

A. My testimony is that that stuff existed prior to the time that Brunswick took it over. That stuff existed when the establishment opened for business.

• • •

[2723]

Q. No, what has somebody else's carpets got to do with Brunswick?

A. It doesn't have a thing to do with Exhibit 20.

Q. And somebody else's vending machines, and somebody else's bars, and somebody else's liquor licenses, all these came to Brunswick, not when it sold its pinsetter, or its lane, but later on, when Brunswick decided to operate a center, isn't that so?

A. When Brunswick decided to operate a center, and went out and negotiated with those landlords and equipment owners for that equipment.

Q. Yes. And then it got a center.

A. And that has nothing to do with Exhibit 20.

• • •

[2724]

Q. Sir, was this 20 designed to compare the

[2725]

Brunswick center in some way with the independent proprietor whose activities are reported on Plaintiffs' Exhibits 1 and 1A, where there is an interest factor?

• • •

A. Yes, it was designed to show what Brunswick's principal and interest payment requirements were on those centers being operated by Brunswick.

Q. And just to refresh us about it, it was not based on the profit and loss statements which you furnished to us for these individual centers?

A. No, it was not.

Q. Nor was it based upon any broken out records for the particular BCOD-operated center; that was your

[2726]

testimony, was it not?

A. That is correct.

The Court: Are you telling this jury it was prepared to meet the allegations, or charges, or statements, or figures, or statistics—call them what you may contained in Plaintiffs' Exhibit 1A?

The Witness: Yes, sir.

The Court: All right.

By Mr. Hoffmann:

Q. Now, would you be good enough to look on your copy of Plaintiffs' Exhibit 1. We have a heading for Proprietors, Interest, and Depreciation, and Cash Need, do we not; and under Interest, a pinsetter, with a price of $8100, and a down payment of $500.

Do you agree that accords with Brunswick's sales practices?

A. Generally speaking, yes.

Q. And so $7,600 remains to be paid, after the down payment at that time, which was $500.

Now, then, there is an interest factor of 23 per cent. And by taking the number of years for the pinsetter contract, which was eight years, we were able to come out with a figure of $218 as interest on a pinsetter, is that correct?

[2727]

A. That would be your average annual interest, yes.

Q. Is that what you referred to as straight line, or single line accounting?

A. I referred to that as average, because the interest would have been higher in the earlier years and would have been lower in later years.

[2728]

Q. It is a perfectly proper accounting technique to average it off that way, is it not?

A. I don't think so, no.

Q. There is some other technique that should have been used, is that your testimony?

A. When you borrow money and pay an installment loan, you are always paying more interest on the higher principal balances. You don't average out your interest payments. You pay higher amounts of interest in the early stages of the loan and you pay lower amounts in the later stages.

Q. There are two ways of making the averaging, aren't there; if you are showing it over an eight-year period, you come out with the same amount at the end of eight years, don't you?

A. That's what I said, that's an average.

Q. Is there anything wrong with putting down an average for each year?

A. No, if that is what you wanted to do.

Q. All. That's what we wanted to do.

A. Okay.

Q. And you don't see anything wrong with doing it, as an accounting or other matter?

A. It is an average. It is not representative of any particular year.

[2729]

Q. It is an average over the eight-year span. That is all it purports to be.

A. All right.

Q. Now, with the lane, you have no quarrel with the price of forty-five hundred?

A. No, sir.

Q. And, again, with the down payment.

A. No.

Q. $900. And it left thirty-six hundred to be accounted for.

And an interest factor of .1425 over five years, which was the contract life, is that right?

A. Yes, sir.

Q. Again, we have an average. It comes out 102, and probably some cents, if you are going to average it. You have no objection to the arithmetic?

A. No.

Q. And so this figure, $320 a year interest, six percent, you do not quarrel with, is that right?

A. No, sir.

Q. When you say that, you mean you don't, that you don't quarrel with it?

A. I don't quarrel with it. It's an average.

Q. You don't think it is wrong.

A. Beg pardon?

[2730]

Q. You don't think it is wrong?

A. It's an average, that's all.

Q. Now, then, we have a depreciation factor, pinsetter, $8100, is that figure accurate?

A. Yes, sir.

Q. A lane, 4500; is that accurate?

A. Yes, sir.

Q. And then we have another $2400—carpets, signs, cash registers, bar, snack bar, intercom, safe, et cetera—is that accurate?

A. It would vary, but I wouldn't quarrel with the number. It is fairly representative.

Q. And total, then, of $15,000 per lane, is that right?

A. Yes, sir.

Q. And now, in order to get depreciation—there is a lot of testimony on this—we premised that the equipment would last 15 years, and we then got a depreciation factor of $1,000 per lane per year, is that right?

A. That's the way I interpret that, yes.

Q. And it is your feeling that perhaps it could be done over a 10-year span, or some other span of years, but that you saw nothing wrong with this accounting method, is that correct?

[2731]

A. Right.

Q. So you have no difference, then, with this averaging, or this computation of interest at $320 a year, or $1,000 per lane depreciation, is that right?

A. Only what I have already expressed, about the average.

Q. Yes, that you would prefer perhaps if there had been some different way of expressing it, but it would come out the same over the period of years.

A. It would come out the same——

Q. The total.

A. It would come out the same in total, yes. But those figures for interest are not representative of any particular year.

Q. Well, they are representative of an average, of the total—

A. Correct.

Q. —spread over the eight years, or the five years, as the case may be.

A. That is correct.

Q. Then having established that, here we have cash need, don't we, an unpaid balance that we have to pay, of $7600, that may go to pay for Brunswick's buying up some sporting goods houses, but we have got to pay it, don't we, because we owe it under contract

[2732]

of the machines; you don't quarrel with that unpaid balance?

A. No, I don't quarrel with the unpaid balance.

Q. And the same with the unpaid balance of $3600 on the lanes, you don't quarrel with that?

A. No.

Q. It is right, as far as you know. And the same is true with the interest item, $1,748 for the pinsetter, $513 on the lane, is that—

A. I have no quarrel with it.

Q. No quarrel. Then, again, with the arithmetic on the bottom, it is simply division—eight goes into 9,348, that's an eight-year span, and we come out with $1,168; and five goes into 4,113, and we come out with $823; and that equals a cost of $1,991, which we rounded off at $2,000 a lane. No quarrel with any of that, sir?

A. You referred to cost. It represents the total payments required.

Q. It is cash need.

A. Right, not cost.

Q. I'm sorry, if I used the word, "cost." It is cash need that we are referring to.

A. That's right.

Q. And you have no difference with that?

[2733]

A. No, sir.

Q. No difference with plaintiffs' Exhibit 1, excepting the limiting thing you said, that you might prefer some other form of getting at the yearly interest other than average, is that correct?

A. Yes, it is not representative.

Q. Not representative of the needs of perhaps all customers; is that what you mean when you say—

A. It is not representative of the needs of all customers, it is not representative of the needs of any particular customer in any particular year.

Q. Why do you say that?

A. Because you added them all up and divided by five, or by eight.

Q. You mean the interest would have been slightly different in different years, depending upon the amount of outstanding balance.

A. It would be quite a bit higher in the earlier years, and would be quite a bit lower in the later years.

Q. When you got through with the whole span of time, it would be the same.

A. The total dollars.

Q. Total dollars, yes.

A. Yes.

[2734]

Q. Now, sir, we come to plaintiffs' Exhibit 1A, depreciation and charges for determination of net income by Brunswick BCOD centers for pinsetters and lanes, and by Brunswick customers. Depreciation on Brunswick's customers, pinsetters, $8100. That's simply the cost of the pinsetter.

A. Yes.

Q. And the lane, 4500, that's simply the cost of the lane, right?

A. That's right.

Q. And we went through these items before. This is the other items of 2400, which you think was reasonable, for a total of $15,000. You have no real difference with that, except what you may have said before as to averaging, is that right?

A. No quarrel.

Q. And then you say the approximate useful life of the equipment is 15 years; depreciation of 15,000 over 15 years equal 1,000 per year, that's a statement of how we worked out depreciation. And then you come—by taking

the 15, dividing it by what we say is the life—and we come out with $1,000 a year. That's the—depreciation item. You have no quarrel with that?

A. No, sir.

[2735]

Q. Now, we get down here and we simply take the interest again, which I went through with you, and we come out with $320 a year, as we did on plaintiffs' Exhibit 1, and you have no difference with that?

A. No, sir.

Q. And then we have a total annual interest, $1,320 per year. That's money which the independent proprietor pays under his contract with Brunswick, is that right?

A. Yes.

Q. We have a heading, Brunswick BCOD Centers, which is our Exhibit 20, or our analog to your Exhibit 20, I should say. Depreciation $500 a year, do you quarrel with that?

A. No, sir.

Q. Indeed, that comes from Brunswick's own figures, doesn't it, that was applied to it?

A. Yes, sir.

[2736]

Q. And then an interest charged by Brunswick, zero per year.

That's where we have a quarrel, is that right, Mr. Barron?

A. We have a large difference of opinion.

Q. Large difference of opinion about zero per year. Nothing else on plaintiff's 1 or 1A; is that right?

A. No, sir.

• • •

[2738]

Q. Is it a fact that any BCO center, Fair Lawn, Interstate or any other one, pays interest?

A. Our centers do not pay interest.

Q. So you see something wrong about our putting down zero when they don't pay interest?

A. I see plenty wrong with inferring that Brunswick had no interest.

Q. We never made any observations in plaintiffs' 1, did we, about Brunswick, the great company with surgical instruments and joint ventures with Nippon or any of those things, we made no observations about that, I am sure they paid interest, and I hope promptly on their debts.

Now, tell me about the management of one of those BCOD centers, Fair Lawn. Would the calculation of interest have anything to do with their running the centers?

A. No, sir, it would not.

Q. Would the way they handled the funds when it came in?

A. Calculation of interest would have no bearing on how the people that run the center actually perform.

[2739]

Q. They wouldn't know in the back of their head that they have got to take out of the 50 cents, or whatever it is for bowling so many pennies to pay over interest, would they?

A. That's not their responsibility, to worry about it.

Q. They don't know anything about it, do they?

A. No.

Q. How do you suppose they'd answer if I asked them the question, "Do you pay interest?"

A. If you asked them if they paid any interest on their center, or if Brunswick had any interest?

Q. No. If I asked them did they, did this center, did you, Mr. Fair Lawn, did you, Mr. Interstate, did you pay interest?

A. I told you they don't.

Q. Then how would they answer if I asked the question?

A. They would say that they didn't know anything about interest.

Q. Very good, sir.

And would you say that interest is not relevant to the management of a bowling center?

A. I would say that interest has nothing to do with

[2740]

how well a center manager performs, and that's the reason that Brunswick did not assess interest to individual centers.

That's the reason that Brunswick kept interest in the confines of its corporate treasury department, because it was the responsibility of the people in the treasury department to worry about interest.

Q. I'd like to read you from testimony given by you at a different time in answer to questions by me, not for a moment to suggest that there is any difference between that testimony and what you have just said, but to ask if you affirm what you said before.

• • •

Q. "That being so, if you were preparing a

[2741]

chart from Brunswick's own statements, what item would you put down for interest?

"Answer: If I were preparing this chart, to compare this customer in this situation with Brunswick on a comparable basis, I would look to the profit and loss statements

of those two situations, and we do this from time to time and when we make our comparisons we eliminate these interest factors and we eliminate depreciation, and we try to measure operations on the basis of revenues and costs and expenses under one management or another. We feel that depreciation and interest expenses are not relevant to the management of the bowling center. The manager has no control over this type of expenditure."

Is there any difference, any reason—any difference you have today with what you said then, do you want to change any of that?

A. No.

• • •

[2764]

Q. Remember I asked you, when I first began this examination, whether or not a tremendous amount of work was done in getting together the materials for defendant's Exhibit 20, a tremendous amount of research; do you remember I asked that question?

A. Yes, I remember it.

Q. Do you remember what your answer was?

A. Not exactly.

Q. What is your answer, if I put it to you now?

A. My answer is that when we went to prepare Exhibit 20 we examined the books of Brunswick to determine the long-term obligations which Brunswick had outstanding to its lenders; we categorized those long-term obligation as to those which related to bowling activities, bowling receivable financing, as to those which related to real estate loans, and other directly identifiable loans with other divisions, as to those that related to foreign activities.

Q. And you separated domestic bowling, was that your testimony?

A. We segregated the domestic bowling, yes.

Q. Now, sir——

A. Do you want me to finish?

Q. Have you more to say?

[2765]

A. Yes, sir; we did a great deal more work than that in preparation of Exhibit 20.

Q. All right.

A. We went to the books and we determined the amount of domestic bowling equipment notes receivable which we had on hand at the end of 1964. We prepared a calculation to show the ratio of outstanding bowling loans to those bowling receivables.

We went to the books and records again and we determined the amount of unpaid principal balance of receivables on those equipment contracts which were repossessed and which were turned over to BCO for operations in 1965.

Q. Is there any more you want to say, anything more?

A. Well, we did more work than what I said so far.

Q. Can you characterize it more generally? Go ahead, if you like

A. After we determined the amount of unpaid principal balances, we applied the ratio of bowling loans to bowling receivables to arrive at the amount of loans that would be allocable to the equipment taken over for operation of the BCO centers in 1965.

And that came to $24,435,000. We then calculated the amounts——

[2766]

Q. Are you repeating now what your whole testimony was of the last two days about this exhibit?

A. I am telling you what we did in the preparation of this exhibit; yes, sir.

Q. Can you find some general way to answer it, so that we don't have to hear it all again? Although I am content to have it, if you want. Is there some general way that would satisfy you, in answering your question?

Mr. McNeill: Your Honor, I object to this, if it is a question, as argumentative with the witness. Mr. Hoffmann asked a straightforward question—What work did you do in preparing this exhibit—and he hasn't permitted Mr. Barron to finish his answer.

The Court: Well, he has almost finished, if I remember his testimony. What else, Mr. Barron?

A. (continuing) We then determined the amount of payments that had been made on the total bowling loans. And we allocated a portion of those payments to the equipment taken over by BCO. That's what Exhibit 20 shows.

Q. All this was done so that you could have some comparison with this exhibit 1A and 1, is that

[2767]

right?

A. This was done to show that Brunswick had substantial amounts——

Q. Please answer my question.

A. This was done to——

Q. Please answer my question. Are you going to answer the question, which is: This was done so you could have a comparison with plaintiff's Exhibits 1 and 1A?

A. Yes.

Q. And so you could have an interest line for interest for BCO, is that right?

A. Not so that we could have one, so that we could show that we did have interest.

Q. Not in fact, surely; you don't propose that that is what it showed, do you?

A. We did indeed, in fact, have interest expense.

Q. In other words, that there is a basis in fact for Brunswick having interest here; is that what you tried to show?

A. There is, if we so chose to allocate it, to an individual center, yes, there is a basis.

Q. Do you remember being examined by me in 1970?

A. Yes, sir.

[2768]

Q. Can I ask you to listen clearly to a question I put to you, at page 1779 of the transcript. The question is:

> "Instead of zero, which is what we put down from your records, if you were to put some number down in place of zero, would not proper accounting technique have required you in some way to reflect the income which Brunswick received from the use of its money?"

To which you answered:

> "Well, first of all, as I explained earlier, we chose not to assess interest expense to the individual centers because it would be a tremendous amount of bookkeeping that would be involved and would involve myriads of transactions and computations and would really have no basis in fact and would not help us to measure the operating effectiveness of the bowling center."

How say you, Mr. Witness, do you repudiate that testimony now?

A. No, I don't repudiate that testimony.

Q. Did you not say then that such a computation would really have no basis in fact?

A. It would have no basis in measuring the effectiveness of a bowling center.

[2769]

Q. It would have no basis in fact, isn't that what you said, sir?

A. It all depends on what fact went before in your other questions.

• • •

[2773]

Mr. Hoffmann: Let's see if I can read it all the way back.

[2774]

"Answer: The thing I fault you on, sir, is showing a factor for this Brunswick customer.

"Question: But it is zero, isn't that so?

"Answer: No. Brunswick's interest is not zero. Brunswick's interest is very high.

"Question: You just said, have you not, that Brunswick doesn't regard interest as relevant to the P & L statement of B. O. C. D. operated centers, isn't that your testimony?

"Answer: Yes.

"Question: You are talking about something else when you talk about Brunswick's interest. You are talking about the Brunswick Corporation as distinct from the B. C. O. D.

"Answer: B. O. C. D. is a part of the Brunswick Corporation.

"Question: Let's go into the matter of interest. Does Brunswick maintain accounts receivable?

"Answer: Yes, sir.

"Question: Do you know the volume?

"Answer: They have reached as high as four hundred millions of dollars in some of the past years. I have an annual report.

"Question: Do you know what they were in 1968?

"Answer: Not offhand. I can refer to an annual

[2775]

report.

"Question: Do you know whether they were small or lesser than the debt that was owed by Brunswick for its bowling operations in 1966?

"Answer: My question is that the receivables would be larger than the loans.

"Question: People pay interest on Brunswick's receivables, do they not?

"Answer: Yes, sir.

"Question: And so far as you know the rate of interest paid on Brunswick's receivables is at least as high as Brunswick pays for the use of money itself, isn't that correct?

"Answer: In some cases. In some cases our interest expense was higher than what our customers were paying.

"Question: In some instances it was lower?

"Answer: Yes, that is correct.

"Question: It is a large corporation, is it not?

"Answer: Yes.

"Question: And it is reasonable to suppose that a large corporation can get a prime interest rate or something close to it from a bank, isn't that so?

"Answer: In some cases. In some cases they are not. We cannot.

[2776]

"Question: You have better bargaining strength, don't you, than a small corporation might have in the bowling industry?

"Answer: When we borrowed from C. I. T. Corporation we borrowed at a higher rate. We paid ten and a half and eleven per cent interest in 1967.

"Question: Suppose for the sake of your testimony that one were to conceive that the interest paid out by Brunswick to banks was as large as the interest which Brunswick extracted from its debtors, would you be satisfied with that for the purpose of talking about interest?

"Answer: They are very close, sir. Very close.

"Question: Now, if the accounts receivable outstanding are higher than the Brunswick debts to the bank, other things being equal, can it be supposed that Brunswick makes more money from collecting income interest, that is to say, interest paid it by its debtors than it puts out in interest which it pays to the bank?"

And here there is some objection from Mr. McNeill. And the Court says, "Let him finish." And finally:

"The Court: Objection overruled. Read the question to the witness."

The question was read. And the answer was:

"I previously said that these figures were very

[2777]

close, at least in the past few years.

"Question: Well, it would follow, then, would it not, because of the fact that outstanding accounts receivable were larger than the bank loans?

"Answer: There are two things that were not considered. One is that not all our receivables bear interest and, No. 2, we try in our financing policies to realize the going rates of money. We try to make sure that we collect enough interest to cover our interest expense.

"Question: You mean that this would put your receivables, your receipts that you receive perhaps at even a higher rate than what you paid out to the banks, is that the point of your remarks, because you made adjustments for fluctuation of the dollar rate?

"Answer: Sure. We have to collect our profit and we have to pay our bills, and a few other things.

"Question: So, tell me, sir, would it be a good accounting technique if there be interest charged against a B. C. O. D. center to charge such interest without reflecting also some return of Brunswick's receivables for the use of money on debts owing to it? Would that have been good accounting practice?

"Answer: If we were to relate the interest income to the centers we operated?

[2778]

"Question: If you were to put down an expense item first for interest.

"Answer: Yes.

"Instead of zero, which is what we put down from your records, if you were to put some number down in place of zero, would not proper accounting technique have required you in some way to reflect the income which Brunswick received from the use of its money?"

And this is the question I asked you about. And this is the context in which the question was put to you, sir.

Do you see anything in that context which would cause you to explain away your answer in terms differently than used in 1970?

A. As I have said, the interest factor was not charged to the bowling centers, because, in our opinion, the interest had no measure on the effectiveness of that operation.

Q. And are you repudiating now your statement that it was not charged also because it would really have no basis in fact?

A. It would have no business reason to do so.

Q. The words I asked you about are: It would really have no basis in fact.

A. And I am saying—define "in fact" as the

[2779]

effectiveness of measuring the operation of the centers. That's the fact I am talking about.

Q. You didn't do it in 1970, did you?

A. Beg your pardon?

Q. You didn't so define it in 1970, did you?

A. All through the 1970 conversations we talked about the effectiveness of the centers.

Q. I just read you the questions and answers for several pages.

A. I did not say it in that specific instance, no, but I said it all throughout it, throughout the other questions and answers.

Q. Indeed, when you came to effectiveness of operation of the bowling center, you separated that part of your answer from the previous one, did you not, because what you said was, "Well, first of all, as I explained earlier, we chose not to assess interest expense to the individual centers because it would be a tremendous amount of book-

keeping that would be involved and would involve myriads of transactions and computations and would really have no basis in fact and would not help us to measure the operating effectiveness of the bowling center."

Those were separate ideas, were they not, in 1970?

A. You are taking the words to make them separate

[2780]

and I am telling you that in my mind they are not separate.

Q. Well, sir, to the extent that you testified as I have just read to you, and to the extent that your answer says it would really have no basis in fact, I ask you, was there any regular accounting kept in the Brunswick organization which showed the items of principal and interest which is found on defendant's Exhibit No. 20?

A. There were books and records kept which showed the interest expense on the loans that are included in Exhibit 20, yes, there were.

Q. When you say the loans that are included, you are referring again to big Brunswick, aren't you, the overall loans? Let me come at it this way, Mr. Barron.

I would like, please, to have yes or no answers to my questions. Was there any record that Brunswick kept or maintained that showed a loan outstanding against Fair Lanes?

A. No, sir.

Q. Was there any record of expense Brunswick kept or maintained that showed a loan outstanding against Interstate Lanes?

A. No.

[2781]

Q. Was there any record which Brunswick kept or maintained which showed loans outstanding for Ten Pins on the Mall?

A. No.

Q. Was there any record kept or maintained by Brunswick which showed loans outstanding for Lodi?

A. No.

Q. Was there any record kept or maintained by Brunswick which showed loans outstanding for the some 160 centers which are reported on Exhibit No. 46 in evidence? I will show it to you.

A. We did not maintain individual loan records on bowling centers.

Q. Was there any book or record of the Brunswick company which showed any principal or interest which had to be paid by any one of these 160 centers?

A. The interest was paid by Brunswick Corporation. It was Brunswick——

Q. Yes or no, please. Would you kindly answer that yes or no?

The Witness: Would you repeat the question?

The Court: Mr. Bremer, repeat it, please.

(Question read as follows:

"Was there any book or record of the Brunswick company which showed any principal or interest

[2782]

which had to be paid by any one of these 160 centers?")

A. No.

Q. If you were to make such charges for any one of those centers—that is to say, any one of the 160, including Lodi, Ten Pins on the Mall, Interstate Lanes, Fair Lawn, any of the others—would not proper accounting technique have required you to keep and maintain records showing principal and interest during the years, the life of these various bowling centers?

The Witness: Repeat the first part, please.

The Court: Mr. Bremer, repeat it, please.

(The pending question was read.)

A. I don't understand the kind of charts you are talking about.

Q. Charges for principal and interest.

A. Do you say charts or charges?

The Court: Charges.

Q. Charges, c-h-a-r-g-e-s.

A. If I were to assess interest charges to specific houses, yes, I would have to set up a separate ledger for each house.

• • •

[2785]

RE-DIRECT EXAMINATION.

Mr. McNeill: Your Honor, prior to asking this witness additional questions, the Brunswick annual report for 1965 has been referred to several times during the testimony of this witness, and I'd like to, for the record, have a copy marked as Brunswick Exhibit 30 for identification, and offer it into evidence.

The Court: Let's skip the identification. Any objection, Mr. Hoffmann?

Mr. Hoffmann: No objection.

The Court: Into evidence, no identification, skip the identification marking.

(Exhibit D-30 received and marked in evidence.)

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[2787]

Q. Looking at the top line once again of Exhibit 20, the 243 million some odd thousand dollar figure——

A. Yes.

Q. —do those numbers come from Brunswick's books and records?

A. Yes, they do.

Q. And that's only a portion of the outstanding loans that Brunswick had as of December 31, 1964?

A. That's right.

[2788]

Q. Only those which relate to domestic bowling receivables.

A. Yes.

Q. And the second line, the $364 million figure, does that come from any calculations you made or did that come from the Brunswick books and records?

A. This came from the Brunswick books and records?

Q. And is that the aggregate amount of domestic bowling receivables as of December 31, 1964?

A. This is the total principal amount of all bowling equipment notes receivable.

Q. And if John Jones, or whoever, in Peoria, had bought the Brunswick equipment in 1960, and had paid his $150,000, plus $50,000, and still owed Brunswick $200,000, the $200,000 would be included in that domestic bowling equipment receivables as of December 31, 1964?

A. Yes, sir.

Q. And the next line, the 66.9 per cent, is that figure more than a mathematical computation dividing the second figure by the first figure?

A. Dividing the first figure by the second.

Q. Thank you.

The next amount, the thirty-six million some-odd thousand dollars, where do those figures come from,

[2789]

something you computed, or calculated, or imagined?

A. Those came from an analysis of the accounts that were repossessed in 1965 and turned over to BCO for operation. And this is the sum of the individual principal amounts owed by each of those accounts prior to the repossession and takeover by BCO.

Q. So if John Jones, who put his center in in 1960 in Peoria, failed to pay the $200,000 he owed to Brunswick, and was repossessed by Brunswick in 1965, and Brunswick BCO commenced operating that center in Peoria, then that $200,000 of unpaid principal balance for John Jones would be included in the $36 million figure?

A. Yes, sir.

Q. Now, what if John Jones had put his center in in 1960, failed to pay his bills, Brunswick did repossess his equipment in 1965, but took the equipment out and put it in a warehouse, or did something else with it, but didn't operate it, would that be included in the $36 million figure?

A. No, sir; it would not.

Q. And what if Brunswick took that equipment out of the warehouse and resold it to anyone, for either a large amount of money or a small amount of money, would that somehow get itself back into this $36 million

[2790]

figure?

A. No, sir; the $36 million is only the amounts owed by those customers whose accounts were repossessed in 1965 and the centers which BCO commenced operating.

Q. And does that $36 million figure represent Brunswick's investment in those centers which it commenced operating in 1965?

A. That is the value of those assets on the books of Brunswick prior to the repossession.

Q. And the last figure, the $24 million figure, is that anything more than applying the 66.9 per cent ratio to that $36 million unpaid balance figure?

A. No, sir; that is exactly what it is.

Q. Now, what about those figures at the bottom, showing an amount of principal, interest, and a total amount paid each year, 1965 through 1975, what was the basis for that calculation?

A. The basis of this was an analysis of the payments on the bowling equipment related loans, the total amount of principal and interest paid each year, and dividing—apportioning that total loan down to the $24 million, and then dividing that portion by the 3,615 lanes.

Q. You didn't throw any more new loans in there, in addition to the 24 million?

[2791]

A. No, sir; we did not.

Q. And the reason for the different principal payment amounts each year, why is that, does that have something to do with the terms of Brunswick's bank loans and other loans?

A. That is correct, that was because of the way the payments had to be made.

Q. And is it your testimony, Mr. Barron, that during these years, 1965 right up to the present day, Brunswick Corporation has, indeed, made these payments on principal and interest in connection with the loans that are included in the top figure?

A. Yes, it is.

Q. And the projections for '73, '74 and '75 are projections based upon the still outstanding loans, and the terms of those loans for repayment?

A. Yes, sir.

Mr. McNeill: That is the end of my redirect, your Honor.

The Court: Re-cross-examination.

RE-CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Brunswick, Mr. Barron, paid or didn't pay, as it pleased, didn't it, when it came to paying off on loans; decided which loans to pay and which loans

[2792]

not to pay, did it not?

A. Brunswick paid its obligations in accordance with the terms of those agreements. We did not ever choose to not pay.

Q. Brunswick took whatever monies it received and spent them as it pleased, did they not, without regard to any particular bowling center coming into existence in 1965, isn't that true?

A. Are you talking of loans that were—

Q. No, monies that Brunswick had, it spent them as they pleased, without reference to any bowling center existing in 1965?

A. Yes.

Q. That's true, is it not? And indeed all these debts referred to on this Exhibit 20 are debts which were incurred prior to the creation of the BCOD bowling operated centers, isn't that true?

A. These are debts which——

Q. Please, is it true?

A. Yes.

* * *

[2793]

MILTON RUDO, called as a witness on behalf of the Defendant, being duly sworn, testified as follows:

The Court: Please speak loudly so that the jury can hear you.

Now, Mr. McNeill.

DIRECT EXAMINATION.

By Mr. McNeill:

Q. Where do you live, Mr. Rudo?

A. I live in Highland Park, Illinois.

Q. Is that near Chicago?

A. It is a suburb of Chicago; yes, sir.

Q. And by whom are you now employed?

A. I am employed by the Brunswick Corporation.

Q. And in what capacity?

A. Right now I am president of the Brunswick Division, which was formerly known as the Bowling Division.

Q. How long have you been employed by Brunswick?

A. I came to work for Brunswick in June of 1940.

Q. Will you tell the jury briefly where you were born, where you grew up, where you went to school, before joining Brunswick in 1940?

A. I was born in Baltimore, Maryland, lived there all my life. I went to school in Baltimore, in both high

[2794]

school and college. I went to Johns Hopkins University in Baltimore.

[2795]

Q. And did you finish Johns Hopkins in 1940?

A. Yes. I was graduated in June 1940 and went to work for Brunswick immediately upon graduation.

Q. Now, Mr. Rudo, could you indicate in what capacity you were first employed by Brunswick and trace your various positions until military service?

A. I was a salesman, sales trainee, in 1940, in Pittsburgh, where I worked for about six or seven months.

And then I was transferred to Baltimore, Maryland—oh, in March of 1941. My Dad had had a stroke and he was with Brunswick and I went there to work with him until January 1942, when I was inducted into the Army.

Q. Now, you say you were in the sales end of things for Brunswick.

Selling what products?

A. I was selling bowling and billiard products in 1940 and 1941.

Q. And how long were you with your—was your tenure with the military?

A. I went in in January 1942 and I was inducted as an enlisted man, until January 1943 when I became an officer, and I left military service officially in November 1945.

[2796]

Q. Did you serve in any of the theatres of the war?

A. In two overseas theatres, one was in the Caribbean early in the war, and then I served in the European Theatre.

Q. What was the circumstances of your discharge from the service?

A. Honorable.

Q. What rank?

A. I was a captain.

The Court: Did you say dishonorable?

The Witness: No, honorable, and I was a captain.

Q. What did you do after getting out of the military?

A. Came back to work for Brunswick as a salesman in the New York branch, which covered North Jersey, part of Connecticut, part of—up to New York State, and all of the five boroughs and Long Island.

Q. And how long did you hold that position?

A. I worked in New York—well, from when—when I got out of service, I took the territory in January 1946. I spent a couple of months reacclimating, and my territories as a salesman included Westchester, Dutchess County, Putnam County, Rockland County and

[2797]

the two counties from the New York border up, Greenwich up through New Haven.

I don't remember the names of those counties.

Q. Can you trace briefly your next position with Brunswick?

A. I was transferred and promoted to be a branch manager in Pittsburgh at the end of 1947, where I served until 1950.

While I was in Pittsburgh, I was in charge of all sales and distribution and administration in the Western Pennsylvania area.

Q. What products, what Brunswick products?

A. All bowling and billiard products.

Q. What happened after that?

A. I came into the home office of our corporation in 1950 as the billiard merchandise manager, and my duties there were to develop the line of billiard equipment and have promotional and merchandising ideas on how to sell that equipment and supplies.

And then in 1951 I was made sales manager of the defense products division.

Q. What was your next position with Brunswick?

A. After that I became merchandise manager for bowling, because the merchandise manager for bowling had died in 1952 or 3, and I held that position until 1955

[2798]

when I was transferred back east and set up headquarters in Harrisburg, Pennsylvania, where we had recently started then an organization of regional managers, and I was the eastern regional manager and was given a divisional vice-presidency at that time.

My responsibility there was to sell all billiard and bowling equipment in the East Coast. I had seven or eight branches that reported to me from Florida up to New England and as far west as the western borders of Pennsylvania.

Q. Now, was this prior to the time that Brunswick's automatic pinsetter was available commercially?

A. Yes.

Q. Now, what was your position after this job?

A. I stayed in this job until 1958. In 1958 I went into the home office as sales manager on a national basis. I remained in that position for about four months when I was given the title of general sales manager. I can't tell you the difference. My responsibilities were the same.

The Court: How about your salary, was that increased?

The Witness: Thank God, yes.

Q. This was in Chicago?

[2799]

A. Yes. I was transferred back to Chicago.

Q. How long did you serve as general sales manager?

A. I served in that job until 1960 when I became vice-president of marketing, and I was in that job until October 1962 when I was made president of the Bowling Division and a vice-president of Brunswick Corporation at that time.

Q. Now, this is prior to any BCO; is that right?

A. Yes.

Q. Now, trace your employment from 1962 forward.

A. I was head of the—president of the Bowling Division until I guess, August of 1964, when I took a leave of absence and went to the—it was not really a leave of absence, I left the day-to-day activities, I was still on the payroll, I went to Harvard for 13 weeks to attend the advanced management program at Harvard.

I was there from about the first week in September to about the middle of December 1964.

I was not in any activities of the company. I was still on the payroll in that period of time.

Q. What happened after that?

A. When I returned from Harvard in January 1965, I was made president of the BCO Division, and I stayed on

[2800]

as head of BCO until 1967.

And in 1967 I was given the additional responsibilities of BCO sales, marketing, service and engineering of all bowling, billiard products.

And in 1969 I was given the additional responsibility of the manufacture of all bowling and billiard products and have stayed on as president of the combined divisions, and I am in that job right now.

Q. Was there a name change in this combined division recently?

A. As of January 1, 1973, we changed the name of the Bowling Division to the Brunswick Division, and that was done because we have other products besides bowling and billiards, and as a corporate philosophy——

The Court: Corporate what?

The Witness: Philosophy, we decided that each division had to have its own marketing trade mark.

Mercury Marine, which is part of Brunswick, really is known as Mercury, and Brunswick as such as a name is really known in the bowling and billiard business. That's why our company changed really to BCO, figuring that each division would capitalize on its own trade mark and its own copyright, we, taking the B, which was formerly a

[2801]

Brunswick—designation, and basically——

The Court: How many titles have you had since 1947?

The Witness: I never counted them, your Honor, but I have had a lot of them. I would guess they range about 10.

The Court: More than that.

Q. Mr. Rudo, with respect to BCO operations of bowling centers, you indicated that you were made head of the division effectively in January 1965. Have you had responsibilities for that operation as the head of that division through these enlargements of the division and through the name change up through today?

A. Yes. BCO is still part of my responsibility. And it is under my supervision.

Q. Now, going back for a moment to the bowling center business prior to the War, this is the time when you first joined Brunswick and you said you were a sales trainee?

What was the bowling center business physically and operatively in the United States before World War II?

A. The bowling business was just really, if I could use a colloquialism, coming out of the saloon days. This was the beginning——

[2802]

The Court: That's the first time the jury sat up in the last four weeks, when you said saloon. You have got me sitting up straight, too.

The Witness: Must have some meaning to them.

This was the beginning of investors building buildings for bowling centers, decor in bowling centers changed, and it became—this was the start of really the bowling recreation center.

Q. Was this prior to automatic pinsetters?

A. Yes. It started in about 1937, 1938, is when it really started, and it continued to the War.

The War, of course, stopped any building, and our company did 90 percent of its business as a defense contractor in World War II.

After the War, our company felt that it would do well, because there were more lanes sold in 1941, as I recall, than any year thereafter, until about 1959, so 1941 was a very big bowling lane year.

After the War, because of the lack of housing in the United States and people coming home from the War, our sales were very restricted in the bowling and billiard end of our business.

[2803]

After about 1950 there was some rebuild—some start of bowling, but the Korean War slowed that down.

Q. When was the introduction of the automatic pinsetting device?

A. Actually, AMF introduced an automatic pinspotter for lease in 1946, and they actually went out and took contracts.

But because of the cost of pinboy, they really couldn't deliver or didn't deliver because their cost of machine was too high, and their actual first deliveries, that was in 52—53 or 4.

Q. You mean the commercial—

A. The commercial operators.

Q. When did Brunswick enter the market with its automatic pinsetting device?

A. Our first automatic pinsetter was introduced in 1956 in Roselle, New Jersey.

Q. Is that anywhere Newark, New Jersey?

A. It is very close to Newark, New Jersey, yes.

Q. In 1956?

A. Yes.

Q. How many AMF pin—automatic pinsetters or pinspotters were installed in commercial centers before Brunswick installed it first?

A. Approximately 20,000 AMF pinspotters were in the

[2804]

market prior to our introduction.

Q. Looking at the year 1956 when Brunswick introduced its automatic pinsetter, would you describe the market for those devices as coming from the people who were already operating bowling centers, or people who were interested in putting in new centers?

A. Well, the big part of the business in 1955 and 1956 was to existing bowling proprietors. As I remember, there were about 60 to 65,000 lanes in existence at that time, tenpin lanes, and the market, when we first introduced it, was to the existing bowling proprietor. He had a problem because the only people he could get to set pins were those people who were either school children or people off the—I don't know what the section of Newark would be, but in Chicago it was Madison Street and in New York it was the Bowery; in other words, these were not people who had steady jobs.

The fact that they did not have someone available all of the time made it difficult and the pinspotters and the pinsetter, when it was introduced, of course, made it available, made their place more viable because they could get business almost at any time.

But up to about 1958 or 1959, there had been a tremendous upsurge of new investors going into the business, people who either were already in and were

[2805]

making lots of money or people who—and they were going on and putting up new bowling centers, or just new investors, because this was a cash business and they could see the profits that were being made at the local bowling center.

Q. Did the number of pinsetters being sold at the late 50's continue to increase each year?

A. Oh, yes, very much so.

Q. Is that just true with respect to Brunswick and its automatic pinsetters, or also AMF?

A. Also AMF, both companies grew tremendously, both companies had very bitter competition. It was very intense, to get both the existing proprietors business and/or the new bowling centers.

Q. To the best of your knowledge by 1961 about how many—what was the share of the market that Brunswick had sold with respect to new automatic pinsetter equipment?

A. By the end of 1961 it was approximately the same; in other words, both of us had about the same amount of pinsetters, pinspotters, in the market.

Q. You mean Brunswick and AMF?

A. Yes.

Q. Were there any other manufacturers——

A. After 1961, there was another, Bowl-More, who had

[2806]

been in the duckpin and candlepin business in New England, had made an automatic pinsetter for that game, which was sold basically in Canada, New England and in the Baltimore, Washington area, came into the tenpin business and introduced on separate occasions two different tenpin, automatic tenpin machines, tenpin setting machines.

[2807]

Q. Before Brunswick introduced its automatic pinsetting equipment what were the down payment terms required by Brunswick in the sale of its not automatic or semi-automatic equipment?

A. Our terms prior to the introduction of the automatic pinsetter was 35 per cent down in major metropolitan areas, and 45 per cent down, as I recall it, in cities of population of under 100,000.

Q. Did that practice change when the automatic pinsetters were introduced?

A. Yes, sir.

Q. By the way, what was the respective cost or price difference in the marketplace for the pre-automatic equipment and the automatic equipment that was introduced in 1956, approximately?

A. From the lane point of view it was not too much difference. The lanes cost anywhere between 45 and 55 hundred dollars apiece depending on the selling price, depending on what a proprietor wanted.

That remained the same. But if a proprietor bought his machines from Brunswick, at the beginning our price was $7700, and then it went to $8100, and then it later dropped back to 77, so his increase was in total sales price, was 81 plus the 4500 or 5000.

Q. You mean the non-automatic equipment cost

[2808]

$7700?

A. No, non-automatic cost 45 to 55. Are you talking about just the pinsetting device?

Q. Yes.

A. I'm sorry. The pinsetting device alone, which was what we called then a B-10, was a semi-automatic device. You're talking about before the automatic pinsetters. That sold for about $650.

But that needed a pin boy to pick the pins up and put them in the tray.

Q. And then the automatic equipment pinsetter was sold for $7700, $8100, in that area?

A. Except AMF at that time was leasing their pinspotter.

Q. Now, what down payment was required by Brunswick for this automatic pinspotter, pinsetter?

A. $500 down payment.

Q. On the $8100 machine?

A. Yes. And that was done so that we could compete with the lease machine.

A bowling proprietor had—had to have a choice. AMF's terms were $500 down, and then they had a 12-year lease in the beginning in which a man paid 12 cents a game which all went to AMF.

In our set-up in order to compete we felt that

[2809]

if we sold a man a machine with the same down payment, gave him eight years to pay, that this worked out with interest exactly the same as a lease, and that means that if he was doing 12,000 games at 50 cents a game he could have paid for these pinsetters with all of the interest charges and everything else in eight years, the lanes would have been paid for in five years, whereas with the AMF rent he would still have to pay rent after the eight years.

So we wanted to be competitive, and the way we could get into this business to be competitive was to have our sale of pinsetters at $500 down, so that we could compete and get the business.

And by introducing in 1956 our pinsetter with 20,000 ahead of us, we about caught up because we had a good machine and we had a good economic situation for the prospective investor, so we got a good bit of the business from 1956 to 1961.

Q. Was there any change in the industry generally in the types of proprietors who were in the business after automatic pinsetting equipment became so popular, was it still the—

A. No, sir, it changed materiality. Instead of having an individual proprietor operating maybe one bowling center in a given area, it changed in 1959

[2810]

and 1960 particularly to chains. They grew—I guess it started maybe in 1958. They grew out of the fact that this was a cash business. Many of them went to the public and sold stock, so that they could finance.

And these people were buying large numbers of bowling centers, five at a time, ten at a time.

It changed the whole complex of the selling and merchandising. In fact, I made a study in 1961 that indicated that 70 per cent of what we were selling in 1961 went to the chain operators who were expanding.

These were people who had come into the business approximately in 1958, 1959, and they were doing most of the expansion in 1961.

[2811]

Q. Now, Mr. Rudo, would you say that the popularity of bowling continued at a high level during the 1950's?

A. I'm sorry, I didn't hear your question.

Mr. McNeill: Mr. Bremer, would you please read the question?

(Question read.)

A. Oh, yes, sir; it grew very much, with women becoming a very important part of the bowling participants, and children, many high school leagues and high school people entered the bowling lanes. The business changed materially and grew materially, by participation and by investors.

Q. Up to 1960, carrying you through the 1950's, what was Brunswick's experience with respect to its bad debt losses resulting from the sale of bowling equipment on an installment basis?

A. Up until 1960?

Q. Yes.

A. It was a half of 1 per cent—that was our losses—which were very minimal, practically nothing.

Q. And the investors were——

A. Were paying their bills and paid them off, up until 1960.

[2812]

Q. How long after 1960 did the sale of pinsetters, as far as Brunswick was concerned, increase?

A. Well, they continued to increase through the year 1961. And after 1961 the sale of new pinsetters declined.

Q. Did it just level off or——

A. Oh, no, it went down very badly. In fact, up until '71——

Q. '71?

A. '71. Well, '62 was not too bad a year. We dropped better than 50 per cent in '62, as I recall, in sales, and even more in '63. I don't remember all the exact figures. But from about '64 through '71 we manufactured practically no new pinsetters. It may have been about a hundred 150 a year. And these were primarily to the military and some colleges.

But after a while we got the military and the colleges to take used equipment.

Q. Mr. Rudo, I show you what is in evidence and has been marked as Defendant's Exhibit 2. The light blue line indicates sales of new pinsetters. Does that line accord with your recollection generally of what happened as you have just described it?

A. Mr. McNeill, if you move a little closer I can see the numbers better. I can't see them from here.

[2813]

(Mr. McNeill moves closer to the witness.)

A. (Continuing.) Oh, yes, that's the record.

Q. What does that show in 1961?

A. We sold and shipped 16,288 pinsetters, domestically.

Q. How about 1963?

A. 1963, 2900.

Q. What about the sales of new automatic pinsetters since 1965?

A. As I said, we practically sold none. The only ones that we did sell was to the military, really. And they insisted on new equipment. About 1967—well, I know after I took over the sales and marketing of our equipment, there were some—almost 5,000 pinsetters in inventory and part of my job was to move those. These were in warehouses, that had been repossessed.

I got our military sales people to go to Washington and tell them that these used machines could do the job, and they could save money. But it took us about two years before we really got the military to start buying reconditioned pinsetters. Up to that point they would only take new.

Q. Mr. Rudo, after 1961, what happened with respect to proprietors who had bought equipment from

[2814]

Brunswick, about paying their bills?

A. Well, many of us who had lived in the prior years, where losses were nil, in '62 and '63 and '4, it became quite a nightmare. We couldn't conceive of what happened. Literally people stopped paying, couldn't afford to pay, and we were getting many requests from our customers to rewrite their contracts.

Q. What was Brunswick's policy during those years with respect to proprietors who said that they had trouble

making payments to Brunswick and who wanted extensions of their contracts?

A. Usually in the early years our credit people, who had this prime responsibility, would visit these bowling centers, analyze the situation, and in almost all cases, every time they could, they granted extensions.

In other words, if a man had an original signed contract for five years to pay off his bowling lane contract, because in the early years we had two separate contracts, in many cases they were extended out to eight years, which then made his payments, on a per month basis, and a per year basis, much less.

And then in some cases, later on, they were extended out as long as ten years, both the pinspotter—I mean the pinsetter, and the lane contracts, some were

[2815]

extended out as long as ten and twelve years.

Q. Now, is the net effect of an extension agreement to the purchaser that he has to pay less dollars each month, or each year, but over a longer period of time?

A. That is correct. That was the reason it was done.

In other words, where he would have had a thousand dollars hypothetically to pay per month, which would have paid part of his pinsetter contract and part of his lane contract, in many of the extensions it reduced it as low as $600, so that this might make it easier.

Q. Were there situations where Brunswick did not grant an extension of a contract when a proprietor was not paying his bills?

A. I know of none.

Q. What about the second time he came in for an extension?

A. Well, after it became hopeless—we had some cases, after extensions were made, where people just walked away

from the bowling centers, and left the equipment, and everything else, there, because, as this industry expanded many of these people who went into the business, and as the competition became bitter, they formed what we called shell corporations. These corporations really had no assets. And, unfortunately, both Brunswick and AMF would sell these corporations.

[2816]

So if the man wasn't doing business—and in some cases he just walked away from the bowling establishment, and left the equipment, and the only place Brunswick, or AMF, or any other creditor could go would be to that corporation, which really had no assets at all. It never paid for its equipment or anything else.

Q. What did Brunswick do about the 40 pinsetters sitting in the establishment?

A. Or the lanes. What we did was try to sell them. And in many cases—in '62 it started, but '63 and '4, the price deteriorated. As I recall, our average balance as of '64 being owed per lane and pinsetter was over $10,000. But in '63 and '4 in some cases we sold bowling equipment as low as five and six thousand dollars. We tried to lease some. In many cases we also—in '62 and '3, particularly '3—hired many people as promotion men. And we sent them out in the field to work with these bowling proprietors who could not make payments. At one point in time we had 28 promotion men on our payroll who were out in the field working in bowling centers to help bowling proprietors promote their business, by getting leagues, showing them how to run tournaments, showing them how to operate their business.

We were trying to get those proprietors who had

[2817]

purchased equipment to pay their debts. We did not want the equipment.

Q. Did Brunswick repossess any of its equipment in the instances when the proprietor did not pay his bills?

A. Only when it became absolutely hopeless, that we could not collect.

Q. Did it occur?

A. Oh, sure. We started to repossess equipment in '62, and it picked up in '63. And it was very great—became an avalanche in '64. There was more equipment than we knew what to do with.

Q. And was it this repossessed equipment that you mentioned earlier you were trying to sell, or realize some——

A. Yes, sir; we were trying to sell this repossessed equipment. In fact, equipment was coming back so fast, it was two to one. In other words, for every one we sold we had two others we had to pull out.

And when we had to pull equipment out, it cost us $800 each time.

Q. $800 per what?

A. Per lane. This was taking the machinery out of the bowling center, carting it away, putting it in a warehouse, and storing it, and then if we ever——

[2818]

getting it right there, so that some day we could resell it.

Q. What was the market in 1963 and '4 for selling this used equipment that you had in the warehouses?

A. As I told you, for every one we sold, at prices as low as better than 50 per cent off of what was on our books as a receivable—for every one we sold we got two back.

The people just couldn't pay, wouldn't pay, and in some cases walked away from it.

Q. Mr. Rudo, does the green line on Defendant's Exhibit 2, indicating repossessions, comport with your recollection of Brunswick's experience in repossessing pinsetters?

A. Oh, yes, sir.

Q. And what does that show with respect to when those repossessions occurred?

A. We repossessed 300 in 1961; 1462 in '62; 3,354 in 1963; 4,592 in 1964; 5,996 in '65; 3,658 in 1966; and in 1967, 1,688; and we continue on out until 1972, where we still repossessed 50.

Q. Mr. Rudo, can you be more specific about the prices and terms that Brunswick tried to obtain for its used repossessed equipment in 1963 and 1964?

Mr. Hoffmann: I object to the form of the

[2819]

question.

The Court: No, overruled.

Answer it.

A. As I recall, we were really following two policies in 1962, '3 and '4. One was to sell them—and, as I said to you, our receivables balance was running somewhere between ten-five and eleven thousand on each lane, and we tried as low as five and six thousand dollars as a selling price. Our down payments on this used equipment, we tried to get as much as 10 per cent, if we could. And we always wanted to get some down payments. It was not easy. In many cases we couldn't even get that. And in those cases it became so difficult we decided to try what we called interim leasing.

And we said to people in '62, '3 and '4: This bowling center has gone bad. We have had to repossess the equipment. The original customer could not pay us, wouldn't pay us. Take it over. We will get it to you on an interim lease. See if you can build it up. See if you can make it a viable business.

And we gave them, at the beginning, a one-year lease. And in some cases we gave them a second year. It was our main hope to keep this equipment in the field and hope that these people would pay us, and some money would be coming in to us.

[2820]

Q. Did some of these deals work out?

A. Yes, sir. Most of them did not, because the business had gotten so bad and they could not pay.

Q. Now, did the prices that Brunswick was offering its used equipment for, and the availability of these interim leases you have just described, have any effect upon the fellow who up to that point in time was paying his bills regularly for equipment he had purchased at $12,000 a lane?

A. It was one of my most amazing experiences, because I never realized it, in my own training, that people stopped paying who could afford to pay. And they were concerned that Joe Smith was not paying. And what were we going to do about it?

And in '63 and '4 it became quite a problem, because it was difficult then to find who really was not doing the business and who was just not paying. And it became quite a problem. And our financial people became quite concerned and got very rigid. Up to this time they were very much easier to work with.

• • •

[2821]

Q. Now, Mr. Rudo, did anything else other than what you have already mentioned happen in the early 1960's, late '50's, with respect to the down payment on equipment being sold by Brunswick?

A. Well, as I indicated to you, as these changes came into being, they were forming, as were other people, forming shell corporations and buying equipment, but the master corporation was the purchasing agent usually, and they were buying, as I said earlier, five to ten establishments.

What they were playing, because of the competitive factors between AMF and Brunswick, one company against the next. They would indicate that, "I can get a 15 per cent down payment on lanes from AMF, if you don't match it you won't get the business," and this was—it is easy to look back at it now, but in 1959, 1960, 1961 and 1962 this was the pressure, "I will buy ten centers from you if I can get 5 per cent, 10 per cent down."

In some cases—we were approached on one occasion by Mr. Dankoff, he'd buy five centers from us, and he was strictly an AMF customer, if we would have sold it to him for nothing down. This was the kind of pressures being put on us.

Our 35 per cent on lanes deteriorated in the

[2822]

1959, 1960, 1961 period to where it got down to as low as 20 and 10 per cent to some customers down on the lanes. We stayed pretty rigid with the $500 down on the pinsetters.

There were usually two contracts, the pinsetter and the lane.

And then later, I think after 1962 or '3, we combined them.

But the down payment aspects declined very badly.

Q. Now, Mr. Rudo, what does a lane, as it's been used in your testimony, mean; is that just the series of wooden boards that are laid down on an alley that you roll the ball down, or is it more than that?

A. No, it is more than that. A bowling lane as we conceive of it, conceived of it then, and mostly today, was the lane and all its accessory equipment equipment, like the kickbacks and the gutters, settee.

Q. Let's take these one at a time.

What is a kickback?

A. Well, a kickback is——

The Court: Well, would you call that the return?

The Witness: No. That's the back end of the pit where the pinsetter fits on the kickback, but the pins bounce off the kickback. They hit,

[2823]

and they splatter, they hit the side boards, they are really the side boards of the back end of the bowling center that pin boys would have used to sit on then.

Q. And you said gutters——

A. They are the gutters that go down along after the foul line, there is a 42-inch bed of lumber, and the gutters, as I recall, are about nine inches, and this is if you don't stay on the surface the ball goes off and you don't knock any pins down.

The Court: That's what you stay out of, right?

The Witness: In many ways, yes.

The Court: Literally.

Q. That's the back end of the pit that kicks the ball and the pins back, and the gutters on the sides of the wooden alley.

Is there more to it than that?

A. There is much more than that. It includes, as we designate it, includes the masking units. The masking unit really is a decorative piece of equipment that meets the ceiling, usually, if it were curved or square, and it basically hides the pinsetters. It before would hide the pin boy, and today it hides the pinsetter.

[2824]

Q. From the bowler?

A. Yes. The only thing really the bowler sees is when the pinsetter comes down to set pins or rake them off, so this is decorative, but it is part of the bowling center.

It functions, in some cases it has pin indicating devices on it as to what is left, and in some cases it shows how to make these various spares that might be left. That has a function, and that's usually part of a bowling center package.

When we talk of 4500 to 5000, this is included in it. Also in the front end—this price of 4500 in what I am describing does not include the pinsetter. The pinsetter is a separate item itself.

The lane includes, package, as we call it, includes the settee in the front end in which the bowlers sit on. It includes scoring equipment, either score tables or telescores, where you write the score and it flashes on a screen out in front, and now more recently in the last couple of years the automatic scorer—when I talk of $4500 or $5000, automatic scorers were not in existence in those days.

It includes balls and pins, finishes, it could include on certain occassions refreshment tables which they might have bought from us—"they" meaning a

[2825]

bowling proprietor.

It would include pin maintenance equipment, it would include lane maintenance equipment for maintaining or keeping lanes in playing condition and cleaning them off.

Usually the contracts included more than just the—included more than the lane, it was made up of many items, we could sell a couple of hundred sets of pins in a bowling contract—

Q. For a 200-lane establishment?

A. Well, no, but they would buy in many cases, "they," the bowling prospective customer would buy enough pins for at least one season, and sometimes two seasons, and if he had a 40-lane set-up, and if he bought four sets of pins per lane, he would buy 160 sets of pins, somewhere around $60 per set, that was a good chunk of money, $10,000, as part of the contract, approximately.

Q. What about the thing that comes up between two alleys where you put your finger down at the wrong time, they get smashed between two balls?

A. It never happens on our courts.

The Court: Did you ever bowl?

The Witness: I bowl every Monday night except when I am down here.

[2826]

The ball return sections are a very important part, and I did forget them. There are two types of ball return sections. In the early days back in the late '50's there was a surface ball return in which the ball came back visually, and later an underground ball return or subway ball return was designed so you don't see the ball any more. Those have some real mechanisms in them.

We have this—almost always in our equipment a ball lift at the front end which in case there is not

enough power for the ball to come up, the ball lift will lift the ball up and put it on the rack, and it will not slow down a game, which has made our equipment very well accepted.

[2827]

Q. All these things you have described, the kick-back behind- the pinsetter or underneath it, the masking unit in front of the pinsetter to hide the unit from the public, the gutters going along the sides of the alley, the ball return mechanism, extra balls, extra pins, and the settees, all of these things are included generally in the $4500 lane, per lane contract?

A. 4500 to $5,000, yes. Telescore—an automatic foul line, the light that goes across, instead of in the old days just—there used to be a man sitting on the wall to judge a foul.

Since about 1946 or 7 there has been an automatic foul line. And that's usually included in the package of what is a bowling lane.

Q. Mr. Rudo, with respect to the pinspotter—pinsetters that Brunswick repossessed, 1961 through 1964, what efforts were made, first of all, to try to sell those repossessed pinsetters?

A. We were—after it was fully determined and all situations had been tried, we had promotion men out, we had extended the contracts for a man whose payments were lower, and everything that was humanly possible to keep that man in business, we repossessed, but before we would repossess we would try to get him

[2828]

to find somebody to take over his business, and if he couldn't we were after our salesmen to take over the business.

As I said earlier, in 1962, 3, 4, 5, 6, we couldn't, 7, we couldn't move the merchandise. For every one we sold two came back.

Q. But were sales of used pinsetters made?

A. Yes. On those figures there, we sold about 130 or 40 bowling centers with equipment, we sold basically the equipment was in it, but we never pulled it out, we sold them in 1963 and 1964 to proprietors, so that they could take over business that had some leagues and that they could make the deal.

We never took that equipment into our warehouse. We either leased it or we sold it to them. It was about 140 centers.

In my calculations I ran to 200 centers like that in 1968 and 9 where we sold them in place, we sold the equipment, but we usually sold or leased the equipment, but we usually had them to work with them to make a deal with the landlord or with other purveyors so they could take over the center as a going business and have those leagues and those people who were there.

[2829]

These were ones that we had repossessed and ones that we could get people to take over.

Q. I show you a copy of defendant's Exhibit 4 which is in eivdence, and I have the exhibit itself up on an easel in front of the jury.

You indicated before you couldn't see that far as I give you a copy here in your lap.

Does the bottom line on that chart reflect the actual experience of Brunswick in its sales of used pinsetters?

A. It shows what we repossessed. Then it shows what we sold. Yes. Of course, after about 1968 or 9 we were selling some out of the warehouse, but most of these others earlier were sold in place.

Q. When you speak of a two to one ratio, what numbers were you talking about as indicated on Exhibit 4?

A. The year 1963 there were 3354 repossessed and we sold 2285.

In the year 1964, there were 4592 repossessed and we sold 2447.

In the year 1965, we repossessed 5,996 and we sold 1,740. I have—in the year 1966, we repossessed 3658 and sold 1,265.

My general feeling is it is two to one. I think it may even be better.

[2830]

Q. Mr. Rudo, with respect to these pinsetter units that Brunswick had to repossess you gave a figure a moment ago of something over $10,000. What did that represent?

A. In 1963 and 1964 when we met many times with our credit department who was responsible for the receivables position, and in 1964 they were quite concerned, and I am recalling from memory, but approximately the receivable balance on a per lane—the average receivable balance on a per lane basis in our installment credit division was about ten-five, ten-eight, it may have been, which means that the man made a contract for, let's say, $12,000 times 40 lanes, would be $480,000, so I can figure easy, rather than take the 500, at the year 1964, approximately, he would still have owed approximately $440,000, 400 to 440,000, 1964 and 1965, of the balances that had been outstanding, and this had us quite concerned because we had heavy loans, and this was the cash we needed to pay off our company's indebtedness.

Q. This was money that was to be paid but wasn't being paid to Brunswick?

A. That's right. That was money that was owed us on contracts by bowling proprietors who were in business.

[2831]

Q. Mr. Rudo, did some change take place in the executive status of Brunswick towards the end of 1963?

A. Yes.

Q. What was that?

A. Well, at the end of 1963 Mr. Bensinger, who had been chairman of the company and who had been the chief executive and chief operating officer, decided that he ought to have a chief operating officer. And he brought Jack Hanigan, John L. Hanigan, to the company as president. And Jack Hanigan became chief operating officer.

Q. How do you spell Mr. Hanigan's last name?

A. H-a-n-i-g-a-n. Don't spell it with two N's. He doesn't like it.

Q. Where did Mr. Hanigan come from?

A. He came to Brunswick from Dow Corning, but he had been with Corning Glass most of his working life, prior to coming with Brunswick.

Q. Do you know, Mr. Rudo, whether Mr. Hanigan in the early part of 1964 shortly after he came to Brunswick devoted any of his attention to some of the problems you have described with respect to repossessions and the inability of Brunswick to sell used equipment or new equipment?

A. Immediately upon Jack Hanigan's arrival in

[2832]

December 1, 1963, or some place therein, he got immediately involved, because in his opinion this was the most critical problem facing Brunswick. There were hundreds of millions of dollars involved in receivables, in loans, and there were—these were all in jeopardy, and really, as I indicated once before, at some point around in 1963 and 1964 we were not—1964 particularly—we were not certain who was not paying because he couldn't pay and who was paying—who was not paying because they didn't want to pay.

And there were a number of them both ways.

Mr. Hanigan was also concerned because we were selling lanes and pinsetters at five, six thousand dollars in the marketplace, and he had ten thousand eight on his books, what would happen to his receivables position, and I guess we had many meetings between himself, installment credit people, our division, financial people, and discussing the entire ramification of what existed in the marketplace, what would happen to our company, and his prime concern was that we collect the receivables because this was the only way we could pay our debts.

We did not find that the banks would take pinsetters for payment in debts. Jack wanted us to extend bowling centers as much as possible, terms, and to try to collect our receivables.

[2833]

Q. What was your position again in early 1964?

A. In early 1964 I was president of the Bowling Division, which was made up of basically the manufacture and sale of bowling and billiard equipment.

Q. Did you consult with Mr. Hanigan about this problem in 1964?

A. Yes, sir. I was involved in many discussions on this as to what were the best ways to solve these problems. We had—pinsetters out in the field to people that literally left, that we didn't have crews to go out there and take them in to dismantle them, that were sitting in buildings and were exposed.

It is easy to sit today and look at it differently, but I can assure you if you lived through it, it was a different situation.

Q. While we are there, for a moment, what would Brunswick do actually when the center with 40 lanes and 40 pinsetters was in effect abandoned by the bowling proprietor, stopped paying his bills, and he left without paying the unpaid balance?

A. In 1963 and 1964 we had to literally saw up the lanes, pull them out of the building, dismantle the pinsetters and take them out. We had pinsetters and lanes in warehouses all over the United States.

[2834]

We had them in Texas, we had them in California, we had them in New York, we had them in Jersey, we were literally—in fact, we eventually consolidated so we could know where they are and what was any good.

• • •

Q. Mr. Rudo, can you recall any particular meetings or discussions with Mr. Hanigan where the two of you reviewed the possible ways of alleviating the problem?

• • •

[2836]

A. Oh, yes, we met about every week to discuss terms, discuss what was happening in the marketplace, as far as sales, and down payments, and what should we do. And we reviewed the fact that we were leasing to those proprietors that we could get to lease, on an interim basis and on a short-term basis, and this was not working.

We were trying to sell them. And the credit department had been extending, and we were out as far as ten

years in some cases, and we were getting requests for 12 and 15-year extensions.

Q. Can you separate in your own mind today, recalling back to 1964, any one, or two, or a series of three or four meetings, from these weekly meetings that you have just described in early '64, can you in your own mind segregate those meetings?

A. Well, about March or April we were coming to conclusions as to what we had to do.

Q. And is it possible for you to segregate what happened in any one or two of those meetings?

A. No, because they were all on the same subject.

The Court: What about the year?

The Witness: Oh, '64. Jack Hanigan came in December of 1964. It was somewhere between the first and tenth. I am not sure.

[2837]

Q. Of what year?

A. 1963. And then commencing almost immediately he got into this subject. And I would say on a weekly or every two weeks we had meetings on it, to discuss the situation. And this continued in January, February and March. And about the first of April, we arrived at some conclusions as to what we had to do to protect Brunswick and protect the situation, because it became quite concerned.

There had been a $15,000,000 charge against our annual statement——

Mr. Hoffmann: Pardon me for interrupting, your Honor. If there is no way in which these meetings can be identified, perhaps there is a place where they took place. If there is no place where they took

place, and there is no time when they took place, I don't know how they are admissible. I don't even know the persons that were present.

The Court: I was just going to say, how about some of the persons who were present? See if you can fix the time and place, and who was present.

The Witness: That's easy.

The Court: What was discussed specifically,

[2838]

if you know, and what region of the country was involved, if any?

By Mr. McNeill:

Q. Where were your offices——

A. Our offices at that time were at 623 South Wabash. The meetings were held on the fifth floor in the executive conference room.

The Court: Chicago?

The Witness: In Chicago.

Q. What executives met during those meetings?

A. In those meetings, as I recall, the financial people were always involved, and it may have been Mr. Cahill who was vice-president of finance at that time, and some of his people; the ICD people, the installment credit people were there; Mr. Abernathy, Mr. Rice, Mr. McGrath, they were in and out of meetings; Mr. Urbanek, the comptroller of the company, was there at that time; I was in attendance; Mr. Roger Bensinger; Mr. Jack Thomas; Mr. Jack Reichert.

There were many people who were in these meetings, because we needed all the information we could get, and all the inputs we could get as to the situation, because it was a very critical situation.

[2839]

Q. And these people you have just described, were they responsible Brunswick officials at that time, for these various areas?

A. Well, Mr. Cahill was in charge of finance, vice-president in charge of finance; Mr. Abernathy was the credit manager of the company; Mr. Rice was involved—he worked for Mr. Abernathy in the credit department, he is now head of it, but at that time he worked for Abernathy; Mr. McGrath was in charge of collections; Mr. Bensinger was working for me at that time in marketing; Mr. Reichert was working for Mr. Bensinger, and he was responsible for the sale of used equipment.

We had a lot of Brunswick executives who were devoting a lot of their time, because this was a very serious and important problem.

And this went on up—in January, February and March, into April of '64, when we resolved what we would do and new policies came out.

Q. The problems that you were discussing in the winter and spring of 1964, were they isolated with respect to any particular geographical area of the United States?

A. No, sir; they applied to the entire bowling situation in the United States.

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[2843]

Q. Mr. Rudo, following these meetings in the winter, spring of 1964, was any decision reached at Brunswick to change policies that were then in existence?

A. Yes, there were. We——

Q. When was any decision made to change any policy?

[2844]

A. In early April, 1964 our policies became more definite, is what really happened, and they were clearly defined to all of us who had been attending these meetings.

Our lawyers, Mr. Nieman, his people, Mr. Cahill from the Financial Department and his people, Mr. Abernathy and Mr. Rice, myself and my people, Mr. Roger Bensinger and Mr. Reichert, Mr. Hanigan was there, Mr. Thomas was there, in April these policies firmed up.

What happened was that we decided after we had considered many different approaches—as indicated, I think yesterday, we had been interim leasing bowling centers and bowling equipment, particularly we had tried to sell them at all kinds of prices down as low as $6,000 for a package, line and pinsetter.

We have reviewed that, we have reviewed our promotions, we even considered just letting the man stay in business and make payments whenever he could.

But as I think I also said yesterday, they would not have worked out well because of its effect on our other people.

Q. What policy was changed or firmed up or modified in April 1964?

A. Our policies which were then duly announced dur-

[2845]

ing the year later in 1964, and particularly in the Fall, in October, but it was promulgated and put into effect as we could, we firmed up the price on any used equipment that we had in inventory, the price would then be $8500.

Q. Not $6,000?

A. Not $6,000. $8500.

This was for A machines, and where there was a package of A-2 machines, it may have been 9400, I'm not sure of that price.

30 percent down was an absolute minimum.

Q. Was that a change?

A. Yes, sir. As I indicated yesterday, our down payments had deteriorated to 10 percent, in some cases.

Price was firmed at $8500, down payment at 30 percent, we firmed up price that we would—we firmed up interest rates, would be four and a half percent add on.

Q. What was it up to that point?

A. Six percent simple interest.

Q. Well—

A. And that's a difference, four and a half percent add on—I'm not—it is around 8.5 interest.

Q. You mean—are you comparing now 8.5 with what?

[2846]

A. With six percent.

Q. With six percent?

A. Yes.

Q. So that the rates of interest were increased?

A. That's right, because money was getting more expensive and our borrowings at that—this was in 1964—interest, and we were—we were dealing with chains, and had been taking their subsidiary corporations.

[2847]

Q. Excuse me for interrupting. What is a chain, as you used the term?

A. As I use it, it is usually a master corporation that has many bowling centers that they supervise. And in the cases of our industry, these chains were usually public companies, they sold stock. And in most cases they were forming subsidiary corporations for each bowling center and maybe in some cases it went as far as sometimes they had a chain for a bowling center—not a chain, a subsidiary for a bowling center, they had a subsidiary corporation

for owning the pinsetters, and they sometimes even had a subsidiary corporation that owned the lanes, and maybe even the bar license.

So there were many ways. Anyway, in many cases, they insisted on signing only these local corporations—if I might use in quotes "local"—to sign our contracts.

And up until '64 we had accepted this. With the new policies, it was determined that in any chain operation of bowling centers, the parent company would now have to sign, because this is the only financial responsibility that we knew existed.

Q. Was this chain that you have described actually put in as a policy of Brunswick in April 1964?

A. This is when the decisions were made. But in

[2848]

some cases it was not feasible to put all of them in effect immediately. But they were—all of us, when we left these meetings, knew that this was the policy, and they were put into effect—everybody was notified about it right away.

Q. Was the price for used equipment, this $8500 minimum price, to be uniform in all instances?

A. Yes, sir.

Q. And the used equipment was the repossessed pinsetter and lane?

A. This was repossessed pinsetters and lanes, either in place in a bowling center or in the warehouse.

Q. What about the down payment requirement, the new one, of 30 per cent, was this to be uniform?

A. Yes, sir.

Q. For all customers?

A. Yes, sir.

• • •

[2849]

Q. What was Brunswick's policy as of April 1964 with respect to the finance charge?

A. It was to be uniform and charged to all customers.

Q. Was anything decided in April 1964 with respect to the possibility of Brunswick actually operating the equipment that had been repossessed in place in a bowling center?

A. Yes, sir; in April—as of the discussion of all the things that we might possibly do—I was given the assignment, as the head of the bowling division then, by Mr. Hanigan, to investigate the possibility of operating bowling centers, because we felt that some of those that were being repossessed could be operated and made into viable or successful businesses.

This came out of those meetings, as I indicated yesterday. The avalanche of repossessions had caused us much difficulty. We had them stored all over the

[2850]

United States.

The Court: Just a moment.

Mr. Hoffmann: Your Honor, I am going to object. This is unresponsive.

The Court: Let's go back a minute. Just listen to that question.

Read it, please.

(Question read as follows:

"Question: Was anything decided in April 1964 with respect to the possibility of Brunswick actually operating the equipment that had been repossessed in place in a bowling center?")

The Court: Answer yes or no.

The Witness: Yes, sir.

The Court: What was the policy? Never mind the discussion. What was done?

The Witness: I was given the assignment, sir——

The Court: What did you do after you got the assignment?

The Witness: —to investigate.

The Court: Then you investigated.

The Witness: Yes, sir. And in the summer of 1964 we made a decision that we would put a

[2851]

valuation team out to evaluate some of the centers that had been repossessed, to see if they had a potential to be a successful business.

The Court: As a result of that, what happened?

The Witness: Well, sir, I went off to Harvard.

The Court: With or without the valuation?

The Witness: Without the evaluation, sir.

The Court: You left them home?

The Witness: Yes, sir.

The Court: Who took charge after you went off to Harvard?

The Witness: When I left, Mr. Jacobson was put in charge. And I returned in December. And we discussed the situation at that time and found that their evaluations had indicated there were a number

of bowling centers that could be operated, and that we should go into the business of operating bowling centers.

And the first one repossessed—and BCO started in operation in late December 1964. In January 1965 Mr. Hanigan formed a separate division. I was removed from the bowling division and made president of the new division.

[2852]

By Mr. McNeill:

Q. Did you take any steps in having charge of this new division to have others working for you, doing particular jobs?

A. Yes, sir.

Q. And what steps did you take?

A. Well, the first thing I did was to call a meeting of our financial group, and our legal people, because we had never been in this retail business—I didn't know what kind of—and personnel people I had tied together—I had never been in this kind of business, and I had to decide how to organize, and what we should do.

[2853]

The Court: And you did, right?

The Witness: Yes.

The Court: What did you do? You said you repossessed and operated in December and January. Then you had a meeting at which other decisions were made.

As a result of those decisions, what did you do on behalf of Brunswick? If anything?

The Witness: I did a number of things, your Honor.

I asked the Legal Department to give me some guidelines in how we should operate from their point of view.

I asked the financial people to give me some guidelines on how we should operate, because their receivables were in jeopardy.

I then formed teams of three or four of us, we went out and visited people who sold services and sold products to dealers or distributors, and also competed with them. We visited——

Q. What do you mean, you went out and saw people?
A. We saw companies. I wanted——

The Court: For example?

The Witness: I wanted to find out how

[2854]

they were organized, their relationship with their customers and their relationships with their own stores.

I went to Standard Oil of Ohio, who operates over 30 percent of the Standard Oil stations in their marketing area.

I visited Hart, Schaffner and Marx, who operated 107, and talked with their president or the president of their retail business on how they operated their stores, what their policies were as it related to their customers and their own stores.

I talked to Holiday Inns, who sold equipment to most of their franchisees and operated, oh, 80 some of their own Holiday Inns. I wanted to know how they related to their customers and how they related to their own operations, and how they were organized.

• • •

[2855]

The Witness: We visited about seven or eight companies to get a feel of what transpired and how they were related to their customers and to their own opertaions, which helped us form our own policies as we went along.

Q. And did you have an opinion at that time after visiting those companies to whether the 14—sorry, whether the—strike that.

When was it that you received any advice from your legal people about giudelines for operating bowling centers?

A. February 1965.

[2856]

Q. When was it that you had completed your visits to these companies you have just described?

A. About April 1965.

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[2857]

Q. Mr. Rudo, did you form an opinion as to what effect Brunswick's operating bowling centers would have on its customers?

A. Yes.

Q. What was your opinion?

A. My opinion was that based on the advice we had received from our Legal Department, 14 points written to us in February by Mr. Seeley, and the general policy set down by our own management and our financial people that we could work very well with the bowling proprietors and we could actually help them as time went on.

Q. Now, during the calendar year 1965, were there a number of bowling centers that—where the equipment was

repossessed by Brunswick and Brunswick turned the operations of that equipment and those centers over to BCO?

A. Yes, sir.

Q. Do you know the extent of the number of bowling centers and the number of pinsetters involved?

[2858]

A. Well, in the first year domestically we took over 124 centers.

The Court: What year?

The Witness: 1965. We took over 124 centers, and it was better than 3,000 lanes.

Q. Did you evaluate centers, other centers, in the United States?

A. Sure, we evaluated, I don't remember, but over a period of six years from 1965 to 1962, we evaluated over 600 bowling centers in the United States.

The Court: 1965 to 1972?

The Witness: I'm sorry.

• • •

[2862]

Q. Was it your experience then when a net 40 pinsetters was turned over to BCO for operation that you got some lanes, as well?

A. Yes, sir; we got 40 lanes, also.

[2863]

Q. All right. Once again, what happened to the other pinsetters, the difference, for example, between the 5,996 pinsetters that were repossessed in 1965 and the 3,629 pinsetters that were turned over in that year to BCO for operation?

A. Most of those went into warehouses. Some were sold in place.

Q. Now, did you have any specific guidelines with respect to your evaluation of a bowling center, where the equipment had been repossessed, before you would take it over for operation?

A. Yes, sir; after we evaluated it, we had as a guideline, and it was our hope, that within two years it would have a positive cash flow, and within the third year it would be profitable.

Q. And did that guideline result in your not taking over some centers you evaluated?

A. Yes, sir. I indicated to you earlier, over the period from January '65 until the present we have evaluated over 600 bowling centers and at no time, to my memory, did we, in the United States, ever have more than about 168, or 9, that we were actually operating, that we had repossessed.

Q. Mr. Rudo, was there any rigid rule as to how long you could or would operate a bowling center

[2864]

that failed to produce a positive cash flow?

A. There was no rigid rule. What I was told by Mr. Hanigan was to get it in a positive cash flow as soon as possible.

Q. Would it have been reasonable, in your opinion, to have a rigid rule?

A. No, sir.

Q. Why not?

A. Because there are many factors that make up for a successful bowling center. In the early years particularly we were at the mercy of whoever we had as managers, in our early training period.

So, therefore, in many cases our lack of success, in our operating people's minds, was the lack of good managers. So, therefore, on occasion we had to change managers to see if that helped us. And we did find that it did help us in many cases.

Q. Can you think of any instances where you stuck with a house that was not producing a positive cash flow because you thought you could turn it around, and it did?

A. I think Fort Lauderdale is a very good example of it; I think Belmont in Pueblo, which I know, has been discussed in this case. There are others—many in the United States.

[2865]

Q. Those are examples of what, sir?

A. Where they had negative cash flows for maybe a year or two after we took them over and they became very positive cash flows and profitable in ensuing years.

Q. Mr. Rudo, going back to this 14 points, why was it that you went to legal people for operational guidelines?

A. Well, I have been an executive in a home office since 1950, and when we go into any major program we consult our legal department, our staff legal department.

All of our market plans are approved by them, all of our advertising copies. They work very closely with our legal department.

Q. Mr. Rudo, point number one of the 14 points—and, again, I have reference to the 14 points as found on plaintiffs' Exhibit 27—says, "Where any such bowling establishment is to be operated by Brunswick Corporation directly, or indirectly through its corporate subsidiary, separate books and records should be kept reflecting in detail the capital investment, income and expenses of each such establishment."

Sir, do you know whether that point or guideline has been adhered to consistently by BCO?

[2866]

A. Yes, sir; it has, to the best of my knowledge.

Q. Point number two reads, "Repossessed pinsetters and alleys in establishments taken over, or newly set up for operation by Brunswick Corporation, should be capitalized at Brunswick's current list prices applicable to the resale to others of like repossessed goods in similar condition."

Do you know whether that has been adhered to consistently by BCOD?

A. In 1955 this was adhered to absolutely.

Q. In—

A. In 1955.

Q. 1955?

A. I'm sorry, '65.

In 1966, our accounting department, because of certain capitalizations necessary, because of some things done in the corporate headquarters, the IRS requested changes—

Q. Who is IRS?

A. I'm sorry. Internal Revenue Service.

And they changed their method of handling depreciation on BCO. So this has not been adhered to as written here.

• • •

[2867]

Q. It has not been adhered to because of this one change you have described?

A. Yes, sir.

Q. Did that change have any effect on the operational aspect of the bowling center in place?

A. No, sir.

Q. Point number three reads, "Brunswick Corporation may recondition, modernize or enlarge such establishments, using either new or repossessed Brunswick goods, in order to make them more efficient, attractive and profitable. In such cases, the cost of such Brunswick goods should be charged to the establishment at Brunswick's current list prices for the sale to others of like goods in similar condition."

Has that point been adhered to, consistently by BCOD?

A. Absolutely.

• • •

[2868]

Q. Now, Mr. Rudo, I read you Point 4 having to do with new centers.

"Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in each case that the location would support such establishment without imperiling the business of any existence establishment in the area, and that no other person or entity is available which is ready, able and willing to open an establishment in such location."

Mr. Rudo, has Point 4 been adhered to consistently by BCO?

A. Absolutely.

Q. Now, there have been some new locations, new centers, where BCO has opened its location, have there not?

A. Yes.

Q. Approximately how many in the United States?

A. Approximately seven in the United States.

Q. I will come back to those later.

A. Yes, sir.

Q. Mr. Rudo, Point 5, which has to do with the takeover of centers, the acquisition of centers:

"Brunswick Corporation should not acquire any

[2869]

existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys unless it should appear that such establishment had become a failing business, and that the operator had requested Brunswick to take over."

Mr. Rudo, has Point 5 been adhered to consistently by BCO throughout its history?

A. Yes, sir, it has.

Q. Mr. Rudo, has BCO ever acquired any bowling establishment containing AMF equipment?

A. They have never acquired any, no.

Q. Well, there has been testimony suggesting that BCO operates a bowling center in Rahway, New Jersey, containing AMF equipment; is that so?

A. Yes, we operate other bowling centers for proprietors who have AMF equipment, not only in Rahway but in other sections of the country.

Q. Are these acquisitions by Brunswick of these establishments?

A. No, sir.

Q. How do you operate such establishments?

A. These are management contracts, and in the case of Rahway it is a lease. We have leased the equipment on the physical premises.

Q. What were the circumstances of Brunswick

[2870]

beginning to operate under this lease at Rahway?

First of all, when did it take place, approximately?

A. About a year or two ago, I'm not certain. About a year ago.

Q. Do you know personally what the circumstances were of Brunswick's beginning to operate that equipment?

A. Not all of it, just in general. Generally, I know.

I know that Mr. Schmidt requested us because he was getting older and his son was not interested in operating, that we had this management service, and he'd like us to get involved.

Our people did. A lease was signed, I signed it.

Just about a week ago I found in inquiring that there was an option to buy in that lease, and since we found that out, which is contrary to this point on, contrary to our policy and philosophy, we have written and told these people we are—that option we will never exercise, and it is as far as we are concerned null and void.

Q. Now, Point 6, having to do with equipment and supplies, reads as follows:

> "Bowling equipment and supplies received by any Brunswick operated establishment from Brunswick Corporation should be charged to the establishment at Brunswick's current suggested list prices for the

[2871]

> sale of similar supplies and equipment to bowling establishments by Brunswick distributors."

Mr. Rudo, has Point 6 been followed consistently by BCO?

A. Yes, sir, absolutely.

Q. Point 7 having to do with Brunswick equipment and supplies that are in short supply reads as follows:

> "In the event that any articles of bowling equipment or supplies sold by Brunswick Corporation

> should be in short supply it should pro rate the available supply in an equitable manner between Brunswick operated establishments and unaffiliated Brunswick customers."

Has that point been followed consistently by BCOD?

A. Absolutely.

• • •

[2872]

Q. Mr. Rudo, can you give any illustration to indicate how point number seven has been applied?

A. Yes, sir. Last Fall, and I think the summer before, pins were in tight supply in the United States, and BCO needed them, and had to wait well into October and November. I had lots of pressure for them to be shipped earlier.

Also, BCO last year was ordering jetbacks, which is a type of equipment to speed up pinsetters, and we had many orders that needed delivery last summer, and I made BCO wait until well into the Fall until after the league season had started because we were in short supply.

We took care of our customers first.

Q. By "customers", are you talking about bowling proprietors?

A. Bowling proprietors in the United States, yes.

[2873]

Q. Mr. Rudo, point eight, having to do with advertising and promotion reads as follows:

> "A Brunswick operated establishment may engage in advertising and promotion up to a level of expenditures comparable to that of soundly managed bowling establishments operated by others."

Has BCO consistently followed that point?

A. Absolutely.

Q. Mr. Rudo, what have you done, if anything, to determine what soundly managed bowling establishments operated by others has been in this area?

A. Early in 1965 and during my career, I have been aware of what bowling proprietors generally spend, and on the average it has run three to six percent of their total revenues.

I have also checked other retail businesses and found they ran four to seven percent of their total revenues.

We set up our budgets at BCO and we adhered to this absolutely, we set up a total advertising and promotion budget of three percent.

Q. Three percent of what?

A. Of their revenue, of BCO's revenue.

The Court: Each center?

The Witness: Yes—well, we do it as a

[2874]

total and then split it back to each center.

Q. With respect to this advertising and promotion budget of three percent that you just testified about, does that include the expense of Bowl-Your-Way-To-Europe program?

A. Yes, it is within the three percent. It is a very small part of it.

Q. What about the trophies given by the local centers to bowling leagues?

A. That's part of the three percent.

Q. What about professionals for the youth program conducted by the local centers?

A. That's part of the three percent.

In early years it was 2.8, and only in the last two or three years have I allowed them to go to three percent.

That also includes administrative costs for advertising people that might be on our staffs and things like that.

Q. Do you regard that three percent limit that you have held BCO to to be conservative?

A. Yes, sir, very conservative.

Q. Point nine reads, "Any advertising or promotional aid given by Brunswick Corporation to its bowling establishments apart from local advertising or

[2875]

promotion charged to the operating expenses of such establishments should be made available on a proportionately equal basis to all other bowling establishments operators who are Brunswick customers."

Does Brunswick Corporation give any promotional aids to BCO only which are not paid for out of the three percent advertising and promotional budget you just mentioned?

A. Absolutely not.

The Court: Just a minute.

Mr. Hoffmann: Your Honor, the vice in these questions, if I may be permitted to say so, is that he supplies the witness with the answer, he has done that for three of the 14 points so far.

I ask that this question not be allowed on the ground that it is leading.

The Court: I will sustain the objection, Mr. McNeill. May I suggest this, that when you give a point to this witness, say what is the policy of Brunswick with regard to that point, and then let him respond, rather than give him the answer.

I know it is very difficult not to ask the question without giving him the answer.

[2876]

Just tell the jury in your own words with regard to nine what is the policy of Brunswick.

The Witness: The policy of Brunswick is that we do not give BCO any advertising money.

The only advertising money that BCO gets is out of their own revenues and it is charged to them as costs.

We do have an advertising budget in the bowling—other side of the Bowling Division which we use broadly in the industry. We spend—well, we spent $200,000 as part of a million dollar fund that the industry has raised. The Bowling Division, the people who manufacture and supply, which is the other side of the business I run, contributes out of their budget $200,000.

Now, every bowling proprietor in the United States gets benefit from that. This million dollar fund, which started, and I had a lot to do with it getting started, in 1968 or 1969, in the industry, overall industry, probably has done more to bring bowling back in 1971 and 1972 to a very good business for most bowling proprietors in the United States.

I think—I know it is, it's been an

[2877]

absolute great help to most bowling proprietors.

BCO also contributes to that separately out of their budget because we tax them $3 a lane and it doesn't go—it is not part of the 200, they contribute I think it is 15,000 dollars on their own to this national fund.

The Bowling Division also helps on the ABC, the American Bowling Congress, tournament, W. I. B. C., with the proprietors on their promotions, and participates in their convention.

We spend money, of course, to advertise our own products which they are selling. That's a separate budget and is in no way related to BCO and BCO gets none of that money except from a number——

Q. Mr. Rudo, turning to point ten, the first part, having to do with lineage charges.

"Lineage charges of any Brunswick operated establishments to be maintained at as high a level as local competitive conditions reasonably permit. Special prices, terms and conditions for league play should be according to a non-discriminatory list adopted by such establishment and should be comparable to the prices, terms and conditions of reputable competitors as nearly as might be determinable."

[2878]

Mr. Rudo, what does the last phrase there, "as high a level as local competitive conditions—" or rather, in the first sentence, "as high a level as local competitive conditions reasonably permit," what does that mean?

A. That means when we are in an operating area, in a market, we should charge the prices that are at the highest level in that market.

If we were in an area of New York City, where they were getting 65 cents, it means that we should be charging 65 cents.

If there are other areas in New York City that are getting 60 cents, but the area we are in is charging 65, we should still be charging 65.

If we are in an area of New York City, let's say the Bronx, which is, let's say, getting 60 cents, we'd be charging 60 cents even though in Manhattan it may be 65.

We have religiously adhered to that policy, to be at the high end of a market at all times in our pricing of a bowling game.

[2879]

Q. Does that mean that your policy is to be exactly the same as every other competitor in the area?

A. No.

Mr. Hoffmann: Same objection.

The Court: I will let it remain. Next question.

Q. Mr. Rudo, when Brunswick begins operating a bowling center, does it sometime occur that leagues that have been bowling at that center have outstanding contracts extending into the very next season?

A. Usually it occurred——

The Court: Can I hear that question again?

(Record read.)

A. Yes, sir.

Q. What is Brunswick's policy with respect to that situation?

A. Where we have inherited leagues and contracts with leagues, we have adhered to what was in existence at the time we took it over.

If we took over a bowling center in January, and they had league contracts, we adhered to it, and if it extended into the next season we'd live by those contracts.

But we would usually change after we took over. In most cases when we took over a new bowling center

[2880]

we raised the price, never lowered it.

Q. You say Brunswick has never lowered the price for bowling——

A. To my knowledge we have never lowered the price when we took over a bowling center and started operating it. We either stayed the same or raised it.

Q. Did anything occur in 1971 which prevented BCO from adhering to the policy you have just described?

A. Well, we really, we haven't taken many bowling centers over, but the thing that occurred in 1971 was that Mr. Nixon, the President of the United States, froze all prices and wages, and our company, Brunswick, has not raised any prices or wages—I won't say not raised any wages—but we have adhered to the policies laid out under Phase I, II and III, although Phase III we don't understand.

Q. Does Brunswick have any policy or plan with respect to prices for lineage after these restrictions have been removed?

A. Yes, sir. It is our plan in all of the contracts that our men are presently signing for the 1973-74 bowling season, which starts next September, and we are out signing contracts now for those leagues, all league contracts have at least a nickel increase per game.

We may not put that in force, depending—we are

[2881]

still waiting for clearance under Phase III. The company has not raised any prices either on supplies or bowling.

Q. It's been testified here that when BCO took over the operation of Ten Pins on the Mall in Paramus, New Jersey, it lowered the lineage prices; is that true?

A. No, sir, absolutely false.

Q. How do you know that?

A. Because I have here with me records of that situation and have checked the daily cash reports before we took them over and checked the daily cash reports right after we took it over, and in Ten Pins on the Mall we raised the adult price list, when we took it over it was 50 cents, and—in 9/6/68, the adult open play price was 50 cents, we raised it to 55 cents at night, and we left it at 50 cents in the daytime.

League, adult, was 50 cents at 9/6/68, which was before we took it over, and on 9/9/68 when we took it over average league price was 54.8 cents a game.

Q. What records did Brunswick have which would supply the information as to prices charged in 1968?

A. We have daily cash reports which are submitted every day to our accounting office.

These are a primary record recognized by the

[2882]

Internal Revenue Service, by accounting firms, and this data that I have read to you comes from those records. I have had that checked.

In 1968 we raised the open price at Ten Pins on the Mall at night to 60 cents, so within a three-month period we raised one, two, three, five prices, junior play to 45 from 40 in December—I don't know what the basis of the other testimony was. Our records and our revenues do not indicate that.

Mr. Hoffmann: Could we have marked for identification the record which the witness just read?

Q. When you were giving testimony just this moment you were referring to a record in your hand?

A. Yes, recap of our daily cash reports which I had made up for me from our records which we use all of the time.

Q. When was this prepared?

A. This recap was prepared last week so I could have it here today.

The Court: Let it be marked.

Mr. McNeill: I will mark the original of it.

Q. Is what I am now showing you the original from which that copy that you just referred to was

[2883]

made?

A. Yes.

Mr. Hoffmann: Could I have the one marked which the witness used? I haven't seen either one of them. That's the one that's significant.

The Court: Let both of them be marked.

(Exhibits D-31 and D-32 marked for identification.)

The Court: What would you call them, work sheets?

The Witness: Recaps of daily cash reports, your Honor. Ten Pins on the Mall—there are five of them.

[2884]

Mr. McNeill: These are being marked as Defendant's Exhibits 31 and 32 for identification even though it was at the request of the plaintiffs' attorney.

Mr. Hoffmann: Yes.

Mr. McNeill: So we have now marked as Defendant's Exhibit 31 for identification the Xerox copy that Mr. Rudo referred to, and as Defendant's Ex-

hibit 32 for identification the original from which that Xerox copy was made.

I will furnish another Xerox copy to Mr. Hoffmann and to the Court.

31 and 32, for the record, are identical. 32 is the original, 31 is the Xerox copy, each of them have some yellow pencilled highlights on them.

Mr. Hoffmann: May I point out that the highlights are not on the copy you gave me?

Mr. McNeill: At a recess I will be glad to furnish you——

Mr. Hoffmann: If you let me refer to that exhibits perhaps you won't have to do that.

Can I have both of them?

Mr. McNeill: I think Mr. Rudo has one.

The Witness: No, sir, I'd like to have it

[2885]

so I can——

Mr. Hoffmann: Your Honor, may I examine it for just a moment?

The Witness: You can examine it. You're welcome to examine it.

The Court: What do you think he is, the F. B. I., or something?

The Witness: I'm not so sure.

The Court: You're not so sure, but I am.

Mr. Hoffmann: I promise it will come back first, your Honor.

Here you are.

The Court: Is that the same one you are giving him back now?

Mr. Hoffmann: Yes, sir, it is.

The Court: Now, Mr. McNeill.

By Mr. McNeill:

Q. Mr. Rudo, what does this recap from Brunswick's records show with respect to the pricing at Interstate Lanes before and after Brunswick began operating?

A. April 15, 1965, which is prior to—that would be acquisition date, prior to acquisition, on April 5, the adult open play price was 50 cents, the league price was 50 cents, open junior price was 35 cents and the

[2886]

league price was 35.

The first DCR's we had——

Q. Excuse me, DCR?

A. Daily cash report, for the start of the following season, which is in October 1965, the open play price for adults, 50 cents in the daytime and 55 at night.

Q. Was that a change?

A. Yes, sir. It is an increase of 5 cents at night, which is right after we took it over.

The league price was 50 cents in the daytime and 55 at night, which is an increase of a nickel a line.

The junior play we raised in October 1965 to 40 cents open, and it was 35, and we raised the league play to 40 cents.

Q. What does that recap show with respect to the prices at Fair Lawn Lanes before and after Brunswick began operating?

A. Well, to help it out, we kept exactly the same prices that existed before and after on equipment.

Fair Lawn, repossessed it on April 15, 1965, daily cash report of March 22, 1965, showed 50 cents daytime, 55 cents nighttime open play, 50 cents daytime league play, 55 cents nighttime, 40 cents for juniors open, and 35 cents for league.

And on October 18, 1965, they were exactly the

[2887]

same prices. We didn't increase any prices in Fair Lawn until December 6, 1966, when we went up, 40 cents. At no time did we reduce price at any one of these centers. We only increased it.

Q. What do your records show with respect to Belmont Lanes in Pueblo, Colorado, before and after BCO began operating it?

A. We took Belmont on April 19, 1965, repossessed it, and prices were 45 cents daytime open price, 50 cents nights.

League play was the same, 45 and 50.

Junior play was 35 and 35.

And on May 19, 1965, one month after we took it over, repossessed it, we raised the daytime price and made all open play prices at 50 cents, league prices instead of having a 45 cent day, all league prices were 50, junior and league we stayed at 35, no reductions.

Q. What about Dutchess Lanes in Poughkeepsie, New York, before and after Brunswick began operating it?

A. We started to operate Dutchess on December 10, 1965. And the price—we kept exactly the same prices, except the night league price, which we increased from 50 cents to 55 cents on 12/13/65.

We took Dutchess over on December 10, 12/10/65. and 12/13/65 we kept all of the prices exactly the

[2888]

same except for league night, and that was increased to 55 cents.

Now, later in that bowling season we increased the prices at Dutchess in December—I mean in November 1966, which was the beginning of the following season, we increased league prices, and we increased the junior prices. I don't know who testified or why, but we never reduced the prices; we raised them.

[2889]

Q. Well, the Dutchess figures in that second column, December 13, 1965,—

A. Yes, sir.

Q. —show three different prices with respect to—

A. League play?

Q. —adult leagues, does it not?

A. Yes, sir; they were 45, morning—I can't read it. For the morning I think it says 45, day 50 and then 55. Is that correct?

Q. Yes. Is there much morning league play?

A. Generally there is not.

Q. And in that one instance, the morning league was a five cent reduction from the—

A. Oh, I missed that. Yes, you are right. Our league business on 12-10-65—I better go over it, I was trying to speed this up. I'm sorry.

They had adult open play business, 45 cents in the morning; 50 cents in the afternoon; and night, 55. All leagues were 50 cents.

When we took it over on 12-13-65 the open play we kept the same at 45, 50 and 55. The league play we made exactly the same as the open play, which was mornings 45, afternoons 50 and night 55. Night is when most of the leagues are on.

[2890]

And we did reduce the morning price on leagues to 45 cents, which is a very small part of the business.

Q. Do you know whether that morning bargain price of 45 cents attracted many bowlers to Dutchess?

A. It couldn't have, we later closed it for not doing business. Because if it did a lot of business in the morning, I am sure we would still be operating it.

Mr. McNeill: I will ask that defendant's Exhibit 32, which is the original of the sheet from which Mr. Rudo has been testifying, be admitted in evidence.

Mr. Hoffmann: I object to the admission of the document in evidence, unless the underlying materials from which it was extracted are here in the courtroom. I have no way of testing its fidelity.

Mr. McNeill: I may have those available, your Honor. I would have to check with my——

The Court: I will admit it subject to the condition that Mr. Hoffmann has the opportunity to examine on the underlying data that supports the exhibit. So ordered.

(Exhibit D-32 received in evidence.)

Mr. McNeill: I ask that there be marked as Defendant's Exhibit 33 for identification a

[2891]

document, the caption of which is, "Tenpin on the Mall, Paramus, New Jersey, locker and shoe rental, bowling and billiard prices."

(Exhibit D-33 marked for identification.)

Q. Mr. Rudo, I show you a copy of what has been marked as Defendant's Exhibit 33 for identification and ask you whether you are familiar with that record?

A. Yes, sir; I am.

Q. Can you describe how it was prepared, from what sources?

A. This record is prepared by the operating people who operate our bowling centers, from the manager to the district manager, to the V. P. of operations, to me. I get a copy of this every year—twice a year.

And it is my check on what we are charging in each bowling center in the United States.

Q. And do you know where the figures themselves come from before they are put on the report to you?

A. Yes, sir; these are the figures that the manager puts together, and he puts them on the DCR every day——

Q. DCR is what?

A. Daily cash report. And he also submits these on a report to his district manager, so that the district manager knows what he is doing. And we give

[2892]

this to our auditors so that when they go in the bowling centers they can check this out.

Q. Does this give you information with respect to what prices are being charged at Ten Pins on the Mall for bowling?

A. Yes, this is a recap of those reports that are made to me twice a year, telling me what occurred in '68, '69, '70 and '71, and where price changes were made.

Q. Does that record reflect any decreases in prices charged by Ten Pins on the Mall?

A. No, sir; not since Brunswick started to operate it.

Q. What time period is covered by the record that you are holding?

A. From September '68 to the proposed prices for June '73, which, of course, will not go into effect until we have approval from our Federal Government.

Mr. McNeill: I would ask that this document be marked as Defendant's Exhibit 34 for identification. The caption of this document is, "Fair Lawn Lanes, Fair Lawn, New Jersey, locker and shoe rental, bowling and billiard prices."

(Exhibit D-34 marked for identification.)

[2893]

Q. Mr. Rudo, I show you what has been marked as Defendant's Exhibit 34 for identification and ask you whether that is a similar report, such as the one you have just described, Exhibit 33, except that this has to do with Fair Lawn Lanes instead of Ten Pins on the Mall?

A. Yes, sir; it is.

Q. Does it cover the same time period?

A. No, sir; it covers from December '66 to the proposed prices in June of '73. And it covers for shoe rental, for lockers, for league business—league day and night—and what was charged the various years, and where we made changes.

Q. Does it show any reduction in price by Brunswick?

A. No, sir.

Q. And does this come from exactly the same records, the daily cash reports, and the semi-yearly reports to you that you have testified about?

A. Yes, sir. In our company each division manager is responsible for pricing and we do not delegate that. And that is the way I keep track of it, in that part of our business.

Mr. McNeill: I ask that similar documents with respect to Interstate Lanes, Lodi Lanes,

[2894]

Dutchess Lanes and Belmont Lanes be marked as Defendant's Exhibits 35, 36, 37 and 38 for identification.

(Exhibits D-35, D-36, D-37 and D-38 marked for identification, respectively.)

Mr. McNeill: So that we can keep our records straight here, the one for Interstate Lanes has been marked as Defendant's Exhibit 35 for identification, the one for Dutchess Lanes has been marked as Defendant's Exhibit 36 for identification, the one for Lodi Lanes has been marked as Defendant's Exhibit 37 for identification, and the one for Belmont Lanes in Pueblo, Colorado, has been marked as Defendant's Exhibit 38 for identification.

Q. Mr. Rudo, I show you copies of these four documents, which have now been marked for identification as Defendant's Exhibits 35, 36, 37 and 38, and ask you whether those are similar reports to you——

A. These are recaps of reports.

Q. Recaps of reports. —with respect to Interstate Lanes in Ramsey, New Jersey; Dutchess Lanes in Poughkeepsie, New York; Lodi Lanes in Lodi, New Jersey; and Belmont Lanes in Pueblo, Colorado?

A. Yes, sir.

[2895]

Q. And once again, what is the basic source of the data for those reports?

A. Daily cash reports and reports from each manager on what he is charging each year.

Q. To you?

A. Yes, sir; it goes to his boss and then to me. Yes, sir.

Q. Will you look at those and tell us whether any of them show any reduction of price by Brunswick?

A. No, sir.

Q. Not on 35?

A. Not on Interstate.

Not on Dutchess, except as I showed before, which was more detailed than that.

No, sir; Lodi.

No, sir; on Belmont, no price reduction.

Mr. McNeill: Your Honor, I would like to offer all these—33, 34, 35, 36, 37 and 38—into evidence, with the same understanding, that they be subejct to the supporting documents.

The Court: So ordered.

(Exhibits D-33, D-34, D-35, D-36, D-37 and D-38 received and marked in evidence.)

Q. Now, Mr. Rudo, I got sidetracked a moment ago on Point 10. I had not read the last sentence of

[2896]

Point 10, which I will do right now.

"Inducements used to obtain leagues should not be so attractive and persistent as to imperil the business of any existing establishment."

What has Brunswick's BCO policy been with respect to this point?

A. That we will not do this, that we will follow this policy. And we do it.

Q. Have you adhered to the policy or not?

A. Yes, sir.

Q. It has been testified in this courtroom that immediately after Brunswick took over Sunset Lanes, out in Deer Park, Long Island, that the managem of that center offered to Airborne Instruments Company leagues certain inducements to bowl at Sunset Lanes which were more generous than the inducements commonly offered at that time by other centers in the same area.

Could that have happened at the time, despite the policy set forth in Point 10?

A. That happened in '65. I would doubt it. I am not—it could have happened. We were so new, there may have been some policies that were not adhered to, to the letter of the law. I doubt that there was any—that they were as low as anybody else in the area.

Q. Do you know, one way or the other, the

[2897]

details of that?

A. I don't know the details; no, sir. But I think you can—I know you will get them from my brother, who is vice president—Bernie Rudo, who is vice president of operations——

Q. No, just answer the question. Do you know the details of that?

A. No, sir; I do not.

Q. Do you know whether Sunset Lanes offered the Airborne Instruments leagues the same extras or inducements the following bowling season?

A. I know they did not, because the league didn't bowl with us the next season.

Q. Mr. Rudo, do you have any policy or practice, as the man responsible for the operations of BCO, to check on the prices charged at the centers, BCO centers, and inducements offered to leagues?

A. Oh, yes, sir.

Q. What is it?

A. We do this very—in our whole company it is our responsibility, as a division manager—when I was in charge of BCO, and in the entire complex as it is set up now—to check pricing. And I use—I have division auditors who inspect and visit and shop bowling centers and report back their findings. And if we ever

[2898]

find a mistake, we correct it, where we find a change. We have outside shopping people—Dale Associates—who shop our bowling centers regularly and issue reports. And I see copies of them. And they check pricing.

We have corporate auditors who drop in occasionally on our bowling centers and report this.

In addition to that, our outside auditors, Arthur Anderson, periodically drop in the bowling centers. The two main sources of our division auditors and our outside shopping people.

• • •

[2899]

Q. Mr. Rudo, I read you Points 11 and 12 of the 14 points.

"Balls, bags, shoes and other merchandise sold in Brunswick operated establishments should be sold at Brunswick's suggested retail list prices with the retail sale thereof in other bowling establishments.

"12. Brunswick's bowling equipment and supplies, handled by Brunswick operated bowling establishments, should not be fair traded in sales to other bowling establishments in the same state."

Has BCO followed those two policies?

A. Absolutely. And we have followed it in the sales, since I have been involved in the sale of merchandise.

Q. And has Brunswick, as opposed to BCO—

A. Yes, sir.

Q. —followed the points there?

A. Yes, sir; 12.

[2900]

Q. Do BCOD centers carry the same line of bowling supplies that Brunswick sells to independent proprietors?

A. No, sir.

The Court: The answer is, "No, sir"?

The Witness: Yes.

The Court: BCO carries different products or merchandise?

The Witness: Yes, sir. We make up a different line for them. We give—

The Court: What do you mean "for them"?

The Witness: For BCO.

The Court: You mean Brunswick Corporation—

The Witness: Brunswick Bowling Division makes a separate line of bowling balls for BCO. The titles are different. We make many private label balls for Korvette or other people. And we make a line for BCO. It is different, the balls are named different. Sometimes their appearance—a black bowling ball looks the same—

The Court: How about the supplies you make for Whipple's Bowling Center in Detroit?

The Witness: The bowling balls, bags and shoes?

[2901]

The Witness: It would be different than BCO sells.

The Court: Why, because of labels, or what do you mean?

The Witness: Yes, because of labels.

The Court: Competition of products?

The Witness: Because of labels basically.

The Court: How about the competition of the product?

The Witness: Generally they are the same.

The Court: How about the prices?

The Witness: Absolutely the same.

The Court: All right. Of course, there is no such thing as a Whipple Bowling Center.

The Witness: We were using John Jones——

The Court: Not that I know of, anyway.

The Witness: We were using John Jones.

The Court: Well, he moved to Peoria.
He is in Biloxie, Mississippi.
Go ahead, Mr. McNeill.

By Mr. McNeill:

Q. Now, if a BCOD center sells a BCO private brand item, a bowling ball, is it substantially the same product, with a different label——

A. Yes, sir.

[2902]

Q. —as the Brunswick branded ball sold to the independent proprietor down the road?

A. Yes, sir.

Q. Does BCO sell it at any lower price than the purchaser, the independent proprietor, sells the substantially the same bowling ball down the street?

A. Absolutely not. We control it better there than we can in other private labels. They absolutely do not. We shop them. We are certain that they do not.

Q. Would it make any good business sense for you to sell a comparable product through a BCOD center at a lower price?

A. Of course not. The bulk of our bowling balls are not sold through BCO. A very, very small percentage.

The Court: How about those bowling balls with Macy's label on them, the same price?

The Witness: Well, we suggest to Macy's only that they should sell it at that price, your Honor. We don't control Macy. We can't tell them what to do. And sometime they cause confusion for us in the market.

The Court: The same product? Competition-wise, I am speaking of now.

The Witness: Some may be, some may not be. They may get a cheaper ball—we don't happen

[2903]

to sell Macy's, but somebody comparable to that. It could be a cheaper ball in a different way; yes, sir. There are some of them are exactly the same.

By Mr. McNeill:

Q. Is there ever the circumstance where BCOD centers sell the BCO line of balls as a discontinued line of merchandise?

A. Yes, sir. The only time that would occur, Mr. McNeill, is—at the same time we would discontinue a ball for the normal trade. If we had a blue ball that was selling at $27.95, and it was not good priced merchandise, or was not selling, the Brunswick side of our business had reduced the price, was going to move the merchandise, if BCO had a comparable line, they could reduce, but only at that time.

If we were not reducing it elsewhere, they could not. BCO has a very much smaller line than we sell through the Brunswick Division.

[2904]

Q. Now, Mr. Dankoff has testified that his centers can't sell Brunswick balls at prices as low as BCOD centers sell Brunswick balls for; is that true?

A. It is false. I don't know how he could make such a statement. Of course, he never buys any, so I don't know whether he knows it or not, really. But it's false.

Q. Has there been any growth in Brunswick's sales of all its bowling balls since 1965?

A. Oh, yes, sir. Well, we hit the low period in bowling ball sales in, I think, '66, and since that date our bowling ball sales have doubled.

If my memory serves me correctly, some place in '66—yes, '66—we sold about 300,000 balls in the United States, bowling balls, and in 1972 we sold over 612,000 bowling balls in the United States.

So if we were hurting other bowling proprietors—and over 50 percent of the bowling balls we sell—approximately 50 percent are sold through bowling proprietors. So if we

were hurting other bowling proprietors by selling through BCO, and if BCO was a bad name in the industry, our business would not double, in my opinion.

Q. How much of that increase is accounted for

[2905]

by sales by Brunswick to BCO?

A. BCO does about 14 or 15,000 bowling balls a year. So, as you can see, it is a small part of our overall bowling ball business.

Q. Mr. Rudo, I will read point 13 to you.

"In the purchasing of food, liquor, merchandise and supplies from sources other than Brunswick Corporation, Brunswick operated establishments should obtain written statements from the sellers thereof at the prices paid and inducements received by such establishments do not discriminate against other bowling proprietors purchasing goods of the same grade and quality from the same sellers. Purchasing for Brunswick operated establishments may be centralized, provided that the central buying agency should not induce or knowingly receive, directly or indirectly, any unlawful discrimination in prices, terms, conditions or services in connection with such buying."

Is that the established policy of BCO?

A. That is our policy and we follow it.

Q. Now, point 14 pertains to two things. I will read first the first part of it.

"Neither Brunswick Corporation nor any subsidiary operating a bowling establishment should become a member of BPAA or of any local affiliate thereof,

[2906]

or similar organization of bowling proprietors."

Has there been any change in that policy?

A. Well, we have generally followed this. On two occasions we have been members of the BPAA. This has had approval from our corporation, and our legal people, because we feel that the BPAA does play an important part in the industry.

We have kept very limited—BPAA is the national bowling proprietors association. And we have cooperated with them. We think they are important in promoting—helping promote the game of bowling. They are the large—they don't represent all bowling proprietors, but they represent a good portion of them.

So we have tried to show good will to them by putting in a couple—in a couple of states, I think it is Florida and northern California—some bowling centers into the BPAA.

Q. When did that occur?

A. That has occurred in the last three years.

Q. Now, what about the second part of point 14, "No one employed by Brunswick Corporation, or a subsidiary, should agree or cooperate with any such organization, or with any other bowling establishment or operator to fix prices, or restrict, or limit in any way competition in the opening or operation of

[2907]

bowling establishments."

Has that policy been adhered to?

A. Absolutely.

Q. Now, Mr. Rudo, we have completed the 14 points. And it has been testified here that BCO did hire away from National Bowl-O-Mat two of the latter's employees, a Mr. Klausmeyer and a Mr. Mahelevich. Is that true?

A. False.

Q. Well, did Brunswick ever hire those two men?

A. Brunswick hired them in the bowling division. BCO never hired them from NBO.

Q. Was BCO in existence at the time they were hired by Brunswick?

A. No, sir.

Q. What kind of work were those two gentlemen hired to do, by Brunswick?

A. Mr. Mahelevich was hired—first of all, Mr. Mahelevich came to Brunswick in July of 1963. This was three months after he had left NBO. So when we hired Mr. Mahelevich he was not an employee—when I say, "we," Brunswick—it is not BCO—he was hired in '63 as a regional promotion manager on the West Coast.

[2908]

He was part of those 28 men that we hired to help bowling proprietors improve their business. He was not hired for BCO at the time he came with us.

Q. When was it, again, that he came with Brunswick?

A. In July 1963.

Q. When did BCO become operational?

A. It was not formed until January 1965.

Q. What about Klausmeyer, when did he come to Brunswick?

A. Mr. Klausmeyer came with Brunswick in the Summer of 19—early summer, June or July, I think, of 1964.

Q. Was that prior to the time that BCO became operational?

A. Absolutely. He was hired as a regional promotion—he was hired as a promotion manager. A regional promotion man—which was what Mr. Mahelevich was one of—had promotion men working for them.

• • •

[2912]

Q. Mr. Rudo, did you ever talk to Mr. Dankoff about the possibility of selling to him the equipment in Moffitt Lanes in Brooklyn?

A. Yes, sir; I talked to him personally on the telephone.

Q. Please describe when that happened, how the conversation took place, and what each of you said.

A. Early in 1965 I was advised that Mr. Dankoff was interested in purchasing Moffitt Lanes. And as the head of BCO, and having known Ruben Dankoff for a long time, I called him on the phone, told him that it was for sale, as soon as we took it over, which would be very shortly.

He said, "What would be the price?" And I told him it would be 8500—it was in April or some place right after we had evolved the situation—and I told him it would be around $8500 a lane, and it came to 200, and he would have to put 30 per cent down.

He told me that was impossible, he wouldn't put that kind of money up. He said he would just transfer assets from the man who was in default. And I assured him that if he did that, he would have to pay up the delinquency, which, as I recall, was around $40,000.

Well, knowing Mr. Dankoff, he never put up the $40,000 and we never heard from him again.

[2913]

Q. Was it ever brought to your attention——

The Court: Hold it.

Mr. Hoffmann: Pardon me. May I have the last phrase repeated?

The Court: He said knowing Mr. Dankoff——

Mr. Hoffmann: I would like that stricken. There is no foundation that he knows Mr. Dankoff other than through this transaction.

The Witness: I beg your pardon.

The Court: That will be stricken, knowing Mr. Dankoff. The jury will be instructed to ignore it.

You never heard from him again, is that right?

The Witness: Yes, sir.

By Mr. McNeill:

Q. How long had you known Mr. Dankoff up to that point in time?

A. I had known Mr. Dankoff from 1957, approximately, when he ran bowling centers for his father-in-law in Rochester, New York.

Q. Mr. Rudo, was it ever brought to your attention that Mr. Dankoff offered to acquire Brunswick equipment in a center which had been repossessed, or which was about to be repossessed, on terms where Mr.

[2914]

Dankoff would pay the delinquency of the former owner and assume the balance of the former owner's contract?

A. It was never brought to my attention.

• • •

[2916]

Q. • • • Now, Mr. Rudo, did the centers operated by BCO in the United States in the first year, 1965, produce a positive cash flow?

A. In 1965, no, sir.

[2917]

Q. When did they first produce a positive cash flow?

A. 1967.

Q. I show you a copy of Brunswick or defendant's Exhibit 10 in evidence, and I ask you whether that accurately shows the cash flow experience of all of the BCO houses in the United States?

A. Yes, it does show that.

Q. Now, do you know the number of bowling centers being operated in the United States total——

A. Presently?

Q. Yes.

A. About 9,000—better than 9,000, I think it is 9500 or something like that.

I have the statistics here.

Q. Does defendant's Exhibit 25 in evidence show the number of centers operated by BCO at the year end from 1965 through 1972?

A. Yes, it does.

It shows 124 in 1965; 161 for 1966; 162 in 1967; 163 in 1968; 165 in 1969; 169 for 1970; 166 for 1971, and 168 for 1972.

Q. Without reading all of the figures, does it also show the number of centers being operated in the United States in the aggregate?

[2918]

A. Yes.

Q. What was that figure this past year, 1972?

A. 8,818.

Q. Mr. Rudo, since Brunswick BCO, has been operating bowling centers, what has Brunswick's policy been with respect to whether it would resell the equipment it has repossessed after BCO has commenced operating a center?

Mr. Hoffmann: Could we find out first if there is a policy, your Honor?

The Court: Yes. Ask him.

Q. Is there any policy with respect to that situation?

A. Yes, sir, there is.

It took us about a year to evolve that policy.

Q. What time are you talking about?

A. I'm talking about in 1965.

Q. What policy was evolved?

A. Finally we decided that we would operate a bowling center—the basic policy always is that we would sell it as a going business. The problem in 1965 was how do we really construct what was a going business, and as we got through the year and tried to relate to our customers we decided that the best way to do this

[2919]

was to operate a bowling center for a full year so that we had an operating statement that we could show someone and that we could base our facts on what was transpiring in that bowling center.

Q. Now, had you operated any center for a full bowling season by the end of the calendar year 1965?

A. Only one, and that was Dover, which was the only one we had operated really, we took it from December to the following December.

Q. Was this policy of first operating a center for a year and then trying to sell it as a going business ever deviated from by BCO?

A. Only once that I remember. That occurred in September 1965.

Q. That's before you had operated any——

A. Before we had completely operated for a year.

• • •

[2920]

Q. What were the circumstances?

A. We had been invited to attend the bowling proprietors meeting in Pittsburgh, because prior to this there had been certain allegations made by Mr. Dankoff to the Pittsburgh Bowling Proprietors Association of how we operated and what we were doing, and we were invited there to talk with these customers and tell them what was transpiring and how we were operating BCO.

Mr. Thomas, who was then the sales manager of the Bowling Division, which I had nothing to do with

[2921]

at that time, myself, Jimmy Wehrenberg from our Legal Department, Dan Scott, who was our salesman in that area, and one other man, went along, we went there and met with the proprietors.

Mr. Dankoff was in the audience, and told us in front of a lot of proprietors that we weren't really interested in selling any bowling centers.

We assured him that every bowling center we had would be for sale, and that frankly we would deviate from our policy, and we offered him any center he wanted to buy, told him we had contracts and that we would sell them to him at the used price.

And, frankly, we used very definite term to him, we told him to put his money up, and that we had contracts there, Mr. Thomas, the sales manager, was with us, and he would write the contracts.

Q. Did Mr. Dankoff offer to buy any center?

A. No, he did not.

Q. Did he subsequently after that meeting ever offer to buy any BCO center?

A. Never, to my knowledge.

Q. Now, why is it Brunwick's policy not to sell one of the centers operated by BCO until after a full year's experience?

A. Well, our early experience was that there was

[2922]

confusion as to how well the business was doing, whether it was worth it, and all this, as we talked to prospects for the bowling center.

We were new at it. We decided that if you could show someone an operating statement that showed volume of business, cost of operation, that it made—he had something that he could look at, and he could tell whether it was worth it, and therefore, we decided that rather than cause a lot of confusion and discussion, based on the operating results, that we would work out a formula, the price; we did, and that's the way we have operated ever since.

Q. How many centers which BCO has operated in the United States has it sold or otherwise disposed of for operation by someone else?

A. 11.

• • •

[2923]

The Court: It is a double question. It is really a double inquiry in one question.

How many were sold, do you know?

The Witness: Nine were sold and two were leased.

• • •

[2926]

Q. Do you know, do you have any idea of the approximate number of price quotations that Brunswick has

made in response to inquiries about purchasing one or more of the BCO centers?

A. Well, it varies yearly, but they run, I counted some, they run 50 a year. Sometimes as high as 75. One year about 30.

Q. Did any of those quotations leads to negotiations between Brunswick and a potential customer?

A. All of them did.

Q. Did any of these negotiations lead into contracts?

A. Many of them did.

Q. I mean in addition to the ones who were actually——

A. Yes, many did, and some of these were not consummated.

Q. Were any of them not consummated because of reasons beyond Brunswick's control?

A. Yes, sir.

Q. Can you cite any instances?

A. Well, Belmont Lanes in Pueblo, Colorado, was sold to Mr. Mischel, who owns 32 lanes there. He bought this based on the fact that he was going to move a trophy business to Pueblo—I mean to Belmont

[2927]

Lanes, and when he negotiated the lease with the landlord, we have a 10 per cent clause, if the volume goes over a certain amount the rent goes up by 10 per cent, and Mr. Mischel tried to get that trophy business excluded from that volume and the additional 10 per cent.

The landlord would not move. He felt it was a firm lease, and he stayed with that.

The contract was cancelled and we returned Mr. Mischel's money.

In Lido Lanes in Newark, California, American Recreation Center purchased Lido Lanes, gave us a con-

tract and could not consummate the deal because the landlord was in bankruptcy who owned the property and could not give him a long-term lease.

That contract was cancelled and we subsequently returned their money.

Imperial Lanes in Dania, Florida, sold to a bowling proprietor from Detroit, and he went to negotiate with Mr. Posner, the landlord, and the roof needed $60,000 of expense, and he had trouble consummating a lease the way he wanted with Mr. Posner; consequently he cancelled his contract——

Mr. Hoffmann: Your Honor, I ask to be excused for interrupting, but it seems obvious at least to the extent he is talking about

[2928]

Imperial Lanes he is talking sheer hearsay——

Mr. McNeill: Here is the man responsible for selling these centers. He has it sold, and he is just telling why the other guy cancelled the deal and he had to return the money.

The Court: Do you have personal knowledge of the roof condition?

The Witness: Oh, sure.

The Court: Proceed.

Q. What was the net result of the Imperial sale that you have just described?

A. Well, the customer cancelled and we returned his money.

Houston, we put a new center—Sharpstown, Mr. Fred McGee, whose father was in the business many years, and Mr. McGee owned a bowling center in Houston, took over

the location we had, he took over the real estate property that we had, that Brunswick owned, at Sharpstown, a suburb of Houston. Mr. McGee and a partner, they bought the land from us, they were to build the building and construct the new center.

Mr. McGee's partner backed out on him. This went on for nine months as I recall, and he finally couldn't get the money himself to finance this deal, and he asked for a return, and we let him out of the land

[2929]

contract, and we returned his money.

There are other examples.

Those are the ones I can recall now.

Q. Do you have any opinion as to why Brunswick has not been able to sell more of its centers at the prices which it quoted?

A. Mr. McNeill, I have here——

Q. Would you first answer?

A. Yes, I do have.

Q. What is your opinion?

A. My opinion is that there is so much used equipment of both AMF, Bowl Mor and Brunswick on the market, that people can buy for almost any price much cheaper than we will sell it as a going business, that they will buy this used equipment.

[2930]

I have ads here that have appeared since 1965 in the bowlers' journal, Bowling Proprietor magazine, I have copies of the magazines and there are ads all through these magazines.

Q. And your testimony is that the used equipment being offered for sale is at such a high price, or low price?

A. At such a low price that people will buy this. And it is this, and it cuts down from the fact that there are a lot of bowling centers go out of business.

Q. Can you describe how Brunswick arrives at a price which it will quote on one of its BCO centers?

A. Yes. I can generally because I don't use it regularly, and therefore I am not as familiar with it as I might be if I were using it regularly.

We take the cash flow of a bowling center and we project it out over ten years. We discount it for future price of money, and then we multiply that by 5.9, and that gives us a selling price.

This usually works out with a 30 per cent down to about a 15 per cent return.

Q. Return for whom?

A. For the new purchaser.

Q. Return on what?

A. On his investment.

[2931]

Q. For the purchaser who is buying the BCO——

A. Who would buy it from us, yes.

Q. Does that mean if a purchaser bought on this basis in 1967 one of the BCO centers, and then subsequently the cash flow improves, improves at the BCO center, that he will have made money on his investment, or not?

A. Oh, sure. It would have been much better, and in many cases he would have done very well.

• • •

[2932]

Q. Mr. Rudo, how many centers operated by BCO were deactivated because you were not able to develop positive cash flow?

A. 43.

Q. That's over what time span?

A. Since we started operations in 1965.

Q. And about how long did BCO operate those 43 centers before closing?

A. It varied. They would run two, three, four, five years, never—about two, three, the average were two, three, four years.

There may have been a few, one or two, that went to five.

The Court: What do you mean by "deactivation"?

[2933]

The Witness: Where we ceased to operate because we were not getting the cash flow, and we would pull the equipment out.

The Court: Then what?

The Witness: Put it in a warehouse.

The Court: Hope to sell it?

The Witness: Yes.

The Court: How about the indebtedness on the obligation once you repossessed it?

The Witness: Once we repossessed it was up to the credit department.

The Court: Incidentally, any chattel mortgages?

The Witness: Yes, depending on the state, there were chattel mortgages.

The Court: Or conditional bills of sale?

The Witness: Yes.

Q. Do you know how many centers were being operated by BCO in the United States at the end of 1972 which did not have a positive cash flow?

A. 14.

[2934]

Q. And is that indicated on defendant's Exhibit 12 in evidence?

A. Yes, sir.

• • •

[2940]

Q. What is the policy, Mr. Rudo, of Brunswick, with respect to operating centers at a negative cash flow?

A. Well, our basic criteria that we set up originally was to get them in a positive cash flow in two years, if possible, based on, really, our judgment, and as the head of the division, and then profitable in the third year. And our management has been very happy with the results.

Q. And what is the net amount of positive cash flow that these centers contributed in 1972; do you know the figure?

A. $8,000,000.

Q. What has been the net aggregate cash flow, positive, that these centers have contributed?

[2941]

A. Twenty-two million since it started.

Q. That's also taking into account the first two years that are negative?

A. Yes, sir.

Q. Now, do you consider the $22,0000,000 to be—

A. I didn't add them up. It's about twenty-two million—

The Court: Is it your testimony that BCO vis-a-vis Brunswick has netted about $22,000,000—

The Witness: Yes, sir.

The Court: —since they started in this business; right?

The Witness: Yes, sir. That's cash flow.

The Court: Cash flow, right.

Q. Do you consider the $22,000,000 to be salvage which BCO has created for Brunswick by the operation of bowling centers?

A. Partially. It does not completely salvage our losses; no, sir.

Q. I think it has been suggested at this hearing that when Brunswick talks about operating BCO centers as a salvage operation, it means that BCO is going to operate a center only long enough

[2942]

to get out of it the unpaid balance of the former operator's purchase equipment contract.

Mr. Hoffmann: Your Honor, I object to counsel's thoughts as to what may have been testified to. He prefaces his question by saying: I think that has been the testimony in this proceeding. If he knows and can supply a page reference, I have no objection, of course.

But if he merely thinks this has been the testimony—

The Court: Is it your testimony? Rephrase it.

Q. Is it the policy of Brunswick to operate BCO centers only until the unpaid principal balance on the prior owner's contract has been recovered?

A. That has never been our policy. I have never really known what the previous balances were in many cases—in most cases. Our policy was to rehabilitate these centers, to make them a profitable going business, so that we could resell them to bowling proprietors.

The Court: Or retain them.

The Witness: Or retain them.

Q. Is that what is meant by salvaging?

[2943]

A. Yes, sir; as far as we are concerned.

Q. Has Brunswick constructed any new centers, or put equipment in new locations, and opened a new BCO center?

A. Yes, sir.

Q. How many times has it done that?

A. We have seven of them.

The Court: In how long a period, Mr. Rudo?

The Witness: We had our first one—in October 1969 we opened our first one in Chicago Heights. The last one we opened was in July of '72, sir.

• • •

[2944]

Q. Were you aware of it each time that one of these centers was opened?

A. Yes, sir. I must submit a project to our corporate management and then have them approve the capital expenditure.

The Court: Were you there?

The Witness: Was I there? You bet.

Q. Do you have a list there, a memo that identifies all the centers which Brunswick's BCO has opened?

A. Yes, sir; I do.

Mr. McNeill: Let's have it marked for identification.

The Court: What's the investment, do you have any idea?

The Witness: In each?

The Court: No, in aggregate.

Mr. McNeill: I'm sorry. What was the question, your Honor?

The Court: How much invested, in aggregate, if he knows?

The Witness: Around six and a half million dollars, your Honor. Around $6 million, because in some places we do not own the property, we only lease it. And therefore I am taking the selling

[2945]

price of our lanes and pinsetters at retail on this, the price in which they go in.

The Court: All on a positive cash flow?

The Witness: Yes, sir.

(Exhibit D-40 marked for identification.)

By Mr. McNeill:

Q. Was it new equipment or repossessed equipment that was put into these centers when they were opened?

A. To my knowledge, they were all—except for some lanes, the pinsetters were all used. There may have been some lanes that may have been new.

Q. You mean the wooden alleys?

A. The wooden alleys; yes, sir.

Q. Will you read from that memorandum, which now has been marked Defendant's Exhibit 40 for identification, the identity of each of these seven new centers?

A. We have one at Western Bowl—which we call Western Bowl at Chicago Heights, Illinois; Northern Bowl in Glendale Heights, Illinois—

Q. Give the dates, please.

A. I'm sorry.—which was started in September 1970; Wayne Recreation in Fort Wayne, Indiana, October 9, 1970—these are when they were opened—Sharpstown Lanes in Houston, Texas, which was opened in April of

[2946]

1972; Orange Bowl, which was opened in Orange County, California, in July of '72; Carrollton Bowl, which was opened in June '71; and Northeastern Bowl, which was opened in July of '72.

We have one other establishment that burned down that we rebuilt. I don't consider that a new one. But it is in Dover, Delaware. It was the first bowling center we took in repossession. And the only reason I have put this on the list is that when we rebuilt it we added eight lanes to it. Instead of being 24, we made it a 32-lane center. It really is not a new one, but the building has been rebuilt, and we have reopened it, and we do operate it. And that was reopened—it was closed about a year—we opened it in September 1971.

Q. Mr. Rudo, did Brunswick do anything prior to opening those centers, each of them, to determine whether or not its location would be injurious to existing bowling centers?

A. Oh, absolutely.

Q. What was it that you did?

A. Well, we had a policy—we have an organization that is set up to screen markets in the United States which have a potential for a bowling center. And they report back on this. These locations are set up and turned over to the sales department. And that's on the

[2947]

opposite side of our business. And the sales manager is given that area and told, "This looks like it has a good potential. Go find a customer." And he has six months to do this.

At the end of six months, if he has a prospect—or during the six months—he should sell it; if not, we then consider it for a BCO. Sometimes we do install a BCO and sometimes we don't.

Q. Now, does Brunswick do anything once it has not been able to find a customer, and it acquires rights in the land, does it do anything further before it begins construction, as far as trying to sell the idea to someone else?

A. Well, if they should come across a prospect, we will consider that prospect. And usually we will quote the cost of the land, and whatever other expenses, plus 15 per cent to cover our overhead. We haven't had any—well, we had one situation like that, early, at Western Bowl, and the man could not get financing for the building, to build a bowling center, in '70, when there was a tight credit crunch, and that never was consummated.

Q. With respect to those new centers you described, were searches made in each instance for independent proprietors to open a center there them-

[2948]

selves?

A. I have a dossier here on each one of them and who we contacted. And in every case—in Fort Wayne we

made 16 contacts to find a prospect who would take over that location, and either they were not interested, or ran into—couldn't finance the building.

In Western Bowl we had four, two of them existing proprietors.

In Orange we have a tentative contract with a—when I say "tentative", because there is no money, and the man is interested.

In Sharpstown we have a letter of intent from a very well known person in the bowling business.

But these are not contracts. In every case we have—I have a prospect list, who was contacted and what is the situation. We try to sell them before we go in. And they are for sale a year after we operate it, every one of them.

• • •

[2950]

Q. Mr. Rudo, has the construction by Brunswick, the opening of these new centers, precluded independent bowling proprietors from subsequently opening new bowling centers of their own in the same competitive areas?

A. No, sir. In Western Bowl, in Chicago Heights, there are two new centers being built within a three or four mile radius, one of 16 lanes—two of 16 lanes.

In Northern Bowl—

Q. Excuse me for interrupting. What is the BCO center in that competitive area?

A. Western Bowl.

Q. When was that opened by Brunswick?

A. In 1969. And we have two new centers being built there right now. And these two people are buying Brunswick equipment.

We have contracts for these centers.

Q. And Brunswick is selling equipment to them?

A. That is correct. In Northern Bowl, in Glendale Heights, Illinois, within two miles——

Q. First of all, what is the Brunswick center in that area?

A. Northern Bowl.

Q. When was it opened?

[2951]

A. In 1970.

Q. And subsequently, what has happened?

A. Well, two bowling centers have been built there and they are in operation, one by some bowling proprietors in Chicago, who have four other places, are building a new center—that have been in operation for a year; they took over an old building that had a bowling center, and they put in—they made an addition to it—it was a 16-lane center, and they made it a 26-lane center—and have operated it for a year.

And this year they are adding 12. Brunswick sold them lanes and pinsetters for that installation. Within this same market there has been another—a Carroll Stream—I think it is Streamwood, Illinois——

Q. How do you spell this?

A. Carroll Stream. I think it is in Streamwood, Illinois. I have it listed here exactly. A 32-lane center opened last summer, complete with brand new Brunswick equipment, lanes and pinsetters, and scorers, and are in competition to Northern Bowl.

In Sharpstown——

Q. What is the Brunswick center there?

A. That's what we call Sharpstown Lanes. In Houston——

[2952]

Q. When was it opened?

A. It was opened in April of '72.

Q. And it was a new installation by Brunswick?

A. A brand new installation by Brunswick.

Fair Lanes has announced—it was a chain operation out of Baltimore—to build a new center within two miles, or two and a half miles. They have announced it. I have the newspaper clippings in my briefcase here. A new center there.

And they have announced two other new centers in the Sharpstown market.

In Orange Bowl, which is in Orange, California, which we opened in July of '72, there is a new center opening in—I don't know whether my pronounciation is correct—in Meijo, California——

Q. How do you spell that, do you know?

A. M-e-i-j-o. Meijo Valley. I think it is. This is an AMF installation. Ground has been broken and a new bowling center is going in Orange County.

• • •

[2955]

Q. Mr. Rudo, are these new centers, opened by Brunswick, for sale?

A. Yes, sir.

Q. And are they for sale on the same terms as the BCO centers which Brunswick began to operate after repossessing the equipment in them?

A. Yes, sir.

[2956]

Q. Have you attempted to sell any of these new centers that have been opened?

A. Yes, they are for sale. And as I indicated to you, we get inquiries on them. We have right now, and I

have a copy of the letter with me, of intent by an old or very well known figure in the bowling industry who wants to buy Sharpstead. The deal is not consummated, but it is a potential deal.

The Court: You're telling this jury in the year 1972 there were 168 bowling centers operated by BCO according to Brunswick Exhibit 8; is that right?

The Witness: Yes.

The Court: Are you telling this jury they are all for sale?

The Witness: Yes.

The Court: On competitive terms?

The Witness: Yes.

The Court: Competitive financing terms?

The Witness: Yes, sir, every one of them.

Q. How many new centers at the most does Brunswick expect to build in the United States in the near future?

A. Our plan is to build approximately four or five, as we find markets, and if we do not have——

The Court: Per year?

[2957]

The Witness: Yes.

Q. Is this going to result in the increase of total number of centers owned and operated by BCO?

A. Well, my own opinion is it would be a very nominal increase because I think as time goes on more of our centers will be sold.

The Court: You are going to build more?

The Witness: No, our intention is to build them and sell them if possible.

• • •

[2968]

Q. Now, Mr. Rudo, with respect to areas where

[2969]

BCO operates centers in the United States, after having repossessed its equipment, as opposed to the new centers it opened, are there any of those areas where independent proprietors have opened new centers, or expanded existing centers, after Brunswick started operating?

• • •

[2970]

A. Yes, sir.

Q. About how many such areas are there?

A. Over 40 in the United States.

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[2975]

Q. • • • Mr. Rudo, does BCOD operate some centers under a management contract?

A. Yes, sir.

Q. And how many such centers are managed by BCO?

A. Approximately 30.

Q. Now, does Brunswick have under those management agreements any option or other right to purchase the managed centers?

A. No, the only one I knew of was one that I testified to in this court, and that has been dispensed with, we have sent the letter that we would never exercise the option.

Q. You are talking about Rahway?

A. Rahway deal, yes.

Q. With respect to all management contracts is it your testimony that there is no such Brunswick

[2976]

option to purchase?

A. Yes, sir, there is no such Brunswick option to purchase.

Q. What is Brunswick's purpose in managing centers for others?

A. Well, we have developed some skills and some expertise in running the centers.

People have come to us who want to buy centers and would like not to manage them but just be investors, and they have asked to manage.

This has gone on for 20 years that I know of, but we have just recently had that expertise, and then also there are some people who have gotten old, who have purchased lanes and pinsetters back in the late '50's and early '60's who don't want to work as hard evidently, and many of them have come to us to manage them.

In fact, last summer I got such a call.

Q. About how many such centers are operated by Brunswick?

A. About 30. It varies a little bit, occasionally.

Q. Mr. Rudo, changing the subject, going to Pueblo, Colorado——

A. Yes.

Q. —what part, if any, did you play in the

[2977]

sale of Brunswick equipment to the operators of Belmont Bowl in Pueblo?

A. Well, as head of the division I would not have had authority to approve credit, but I would approve the final aspects that we would take the contract from the sales and marketing point of view and submit it to credit.

Q. Can you explain how the orders are taken within Brunswick and who decides if they will be accepted?

A. Well, back in the days when these were being sold each region and branch, we had branches in those days, had what they called a sales engineer. It was his job to sell bowling centers.

He and his branch manager would work on them. They would make surveys that had to pass sales, sales and marketing approval in Chicago, in the home office.

They also had these surveys, had to be approved by the credit department, who were not under the bowling division. They were a separate operation.

Q. The credit department operated autonomously?

A. Absolutely. Absolutely, they reported to the financial department, not to the bowling division.

And after the salesman got all his data together and had a contract signed with down payments, he would

[2978]

submit it to the order department in Chicago where we would review it and in most cases I got involved.

Q. Now, did you get involved before, or after, credit approval and before, or after, any legal approval?

A. Well, in most cases it was before credit approval——

Mr. Hoffmann: I am going to ask that this question be stricken and properly phrased.

He now puts in before or after credit or legal approval. I didn't remember any of that in this witness' prior testimony.

He has asked a question in point of time, did his participation take place before credit and legal approval, and it assumes, as so many of his questions do, that such approval took place.

There is no foundation for it, your Honor.

The Court: I am going to sustain it. Rephrase it.

Ask him what happened. When did he come into the picture at Belmont.

Q. When generally did you come into the picture in those days with respect to salesmen's orders?

A. I came into the picture before either the credit department or legal depar

[2979]

Once we approved, it was sent over to them, and then it had to pass their muster.

Q. When did it first come to your attention that a Brunswick salesman had taken an order for a new center which subsequently became Belmont in Pueblo?

Mr. Hoffmann: I am going to object to that one, too, on the ground that it is leading.

The Court: No, I will permit it.
Answer it. When?

The Witness: Early 1961.

Q. And can you recall the circumstances when this first came to your attention?

A. Yes. Mr. Lieblich, who was head of National Bowl-O-Mat, called me on the phone, and we discussed the situation in Pueblo. He was quite concerned that a

new bowling center was going in there, as his place had not done well, and he wanted us not to sell to these new people who were going in.

Q. And did you participate in any decision at that time either accepting or rejecting the order of this equipment?

A. Yes, I did.

I discussed it with the sales manager and with our field sales people, who insisted that the location was good, Pueblo could take the bowling center.

[2980]

Because of Mr. Lieblich's protestations and the fact that he felt that he had done as well as he thought he should, I rejected the order, would not take it.

Q. Were there any qualifications with respect to your rejection at that time?

A. No, sir. I felt at that time maybe we ought to see what transpired, and if he could do better, we might consider it in the future, but there were none as far as this was concerned.

Q. Did you ever again become involved with this—with Brunswick selling equipment to the center which became Belmont?

A. Yes, sir. Late that fall in October, Mr. Bonforte, who was going to build the center, he told me that he knew that Mr. Lieblich had been to us, and then to AMF, and that he felt that we had to sell him, and he felt that this center would go, and he was going to build it.

Q. Who again was Mr. Bonforte?

A. Bonforte was the man who was going to build the center, and to my knowledge was the prospect that we were going to sell to.

Q. What happened next?

A. Next thing I know is early in 1962 I have received a call from Mr. — when I say "early," January,

[2981]

late—maybe even late December—from Mr. Lieblich telling me that he heard that this had been revived and wanted to know my position.

I told him that I might we might have to sell, but I wanted to consider it, and I sent other people out there to do some survey work.

Q. Out where?

A. Out to Pueblo.

Q. Was there any further communication between you and Mr. Lieblich about this subject?

A. Yes, he came in to Chicago, and we discussed it further, and he felt that he had a commitment from AMF and Brunswick that we would not sell to this center, and that the town couldn't take it.

I had further surveys made which indicated that it could take it, and then I had some survey from one person who indicated that maybe there was some doubt.

I went to our legal department and covered the entire circumstances of the various calls I had gotten from and visits I had had from Mr. Lieblich and conversations I had had with Mr. Bonforte, and I apprised them of what was transpiring.

[2982]

Q. What was your feeling at that time as to whether Belmont could operate profitably?

A. I felt that a center would go in Pueblo, but I felt under the—that it would be a difficult situation for us not to take it.

I also was concerned with Mr. Lieblich. I didn't want to see him fail or his organization fail; we never do.

After consultation with the Legal Department later in the Spring, they felt we had to sell this, and we signed the contract.

I sent our promotion people in the Spring of 1962 to Pueblo, and they were some three months in the Pueblo Bowl-O-Mat to try to help this business.

Reports I got back were that they did help it. They did get a number of leagues and a number of bowlers.

The Pueblo Bowl-O-Mat did seem to be improving. Belmont Bowl was installed late and opened in August or September 1962—

Q. Let's back up for a moment. Before you finally approved the contracts for Belmont, did you do anything to try to talk the promoters of Belmont out of going ahead?

A. Yes. I indicated I had sent other people out

[2983]

there.

I had sent Mr. Blanks out, who talked to both Mr. Lieblich and also to the promoters of this bowling center, and he tried to talk them out of it.

They said they would not be talked out of it, that if we didn't want to sell them, they could get equipment from AMF or Bowlmore.

Q. Do you know, in fact, Mr. Rudo, whether AMF or Bowlmore were trying to sell equipment to the promoters of Belmont?

A. No, I do not, I don't know what the report was.

• • •

[2984]

Q. What were the factors that you took into account in approving this order?

A. We took into account the evaluations and analysis that had been made, we took into account the fact that we had been successful in helping Pueblo Bowl-O-Mat promote more business which indicated to us that there was business there, we took into account the fact that these people were going ahead and that AMF or Bowlmore possibly could sell them.

The biggest fact that made us approve it was the fact that our Legal Department said we should base on what had transpired in Lieblich's conversations with us prior to this sale.

Q. Do you know when the equipment contract for the Belmont sale was actually signed?

A. Late Spring of 1962.

Q. And who were the operators to be at Belmont?

A. The operators were National Bowling Centers, as far as I'm concerned, the only people I know about

[2985]

were Mr. Bonforte.

Q. What was the name of the other organization—

A. National Bowling Centers, I think, was the name of the corporation.

Q. Did you know anything about that entity at all?

A. Very little, very little.

Q. Did Brunswick choose this National Bowling Centers, or whatever the proper name was, as its customer?

A. No, sir, we did not. These were Mr. Bonforte's clients.

Q. Mr. Rudo, were you involved in any subsequent event, subsequent to the opening of Belmont, insofar as as non-payment on the obligation to Brunswick is concerned?

A. No, that was basically a Credit Department, except that it must not have paid, because we eventually evaluated it years later and took it over in the BCO operation.

Q. Do you know when that was that BCO commenced operating Belmont?

A. 1965, if I recall.

The Court: Why?

[2986]

The Witness: Why did we take it over?

The Court: Yes.

The Witness: Because after its evaluation we felt that, and the operation, in knowing the town, that we could make it successful.

The Court: What happened with the relationship with Belmont, with Bonforte?

The Witness: Well, Bonforte never was in it.

The Court: Bonforte's clients.

The Witness: He evidently did not pay. This thing came through the Credit Department as a bad risk and it went to our Evaluation Department in 1965, and we went, took it over, and operated it.

The Court: You mean repossessed?

The Witness: Repossessed, yes, I'm sorry.

Q. Did you have an opinion in the Spring of 1965 as to whether Brunswick could operate it successfully?

A. Yes, sir, I did.

I felt we could.

Q. When you say operate successfully, what do you mean by that?

A. Well, I felt we would get a positive cash flow

[2987]

out of it.

As I recall, the first year we did. The second year I think we did.

And the third, fourth and fifth year we did not.

But we—then, the last two or three years, it's been very profitable.

Q. Mr. Rudo, was it your purpose in whole or in part to injure Pueblo Bowl-O-Mat by keeping Belmont in operation?

A. Absolutely not.

Q. Mr. Rudo, to your knowledge, has it ev been a plan or purpose or design of Brunswick to take over and operate Pueblo Bowl-O-Mat or any other bowl-o-mat center?

A. No, sir, it has not been our design or idea or thought. We preferred not to take it over. We basically would prefer that the customers would continue their operation and be successful.

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[2993]

Q. Mr. Rudo, is there any BCO center presently operating which you would buy at Brunswick's asking price?

A. Yes, sir; Fort Lauderdale, Lauderdale Lanes. I think it is an excellent one.

Q. Do you have any idea what the price would be?

A. No, I have not.

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[2996]

Q. Mr. Rudo, in your opinion, what part does competition play on the success or non-success of a bowling center?

A. Well, are you talking about competition of other bowling centers?

Q. Yes.

A. I think it is a very minor factor, that if you run—have a good location, and if you run your bowling center properly, keep it clean, and you promote it, and you really work at it, and make—work at your bowling business—and I think the best example of that is right here in Paramus, where there are three centers, and the most successful one is run by an independent, who seems to go on and make money and do well.

Q. And what are you referring to, who are you referring to?

A. I am referring to Paramus Bowl.

[2997]

The Court: Mr. Esposito?

The Witness: Mr. Esposito's bowling center.

Q. Mr. Rudo, changing the geographical focus again to Poughkeepsie, New York, do you know approximately when BCO commenced operating Dutchess Lanes at Poughkeepsie?

A. It was either in '65 or early '66.

Q. Did you have an opinion at that time as to whether Brunswick could operate that center successfully?

A. Yes, sir; I did.

Q. What was your opinion at that time?

A. Knowing Poughkeepsie, because I had worked there, I felt that it could be successful. It was not one of

the better centers we took over, but I felt that it had a good chance.

Q. What things did you take into account in forming that opinion?

A. Well, having some knowledge of Poughkeepsie, having worked Westchester County, knowing the Levines —they had had that center, it had burned down—and, just generally, it had been a good bowling area.

Q. Who had been operating Dutchess prior to Brunswick taking it over?

[2998]

A. Well, just immediately prior, Mrs. Levine and her daughter had been operating it. Prior to that, a chain had been operating it. And they just walked away from it.

Q. Mr. Rudo, that center lost money, didn't it?

A. Yes, sir.

Q. And Brunswick closed it down, took out its equipment?

A. Yes, sir.

Q. Why did Brunswick operate it for as long as it did, losing money?

A. Well, because we had felt that it would be good. When I consulted with my operating people, they told me that they felt it was management, after the first two years. And they put a new manager in and the results didn't change.

Bowling was evidently good in that town, because two of the bowling centers—Touponse expanded, and Mardi-Bob expanded while we were operating that center. Those two centers are closer to Wappingers Falls than Dutchess, by a long shot.

Q. Do you have an opinion now as to why Dutchess Lanes didn't work out as you had hoped?

A. Yes, sir; I do.

[2999]

Q. What is that?

A. I think it was located badly, and, as is the case in most towns today, downtown had deteriorated, people don't go downtown as much, even in small towns—smaller towns.

Q. Did anything in particular happen in downtown Poughkeepsie during the middle 60's?

A. Well, parking was very limited with this center. I don't know of anything specific; no, sir.

Q. Mr. Rudo, have Interstate Lanes in Ramsey, New Jersey, and Fair Lawn Lanes in Fair Lawn, New Jersey, been profitable under BCO operation?

A. Very.

Q. Do you know whether the trend has been in any particular way, the profit?

A. Generally, the profits have gone up in both the centers.

Q. Mr. Rudo, are Fair Lawn Lanes and Interstate Lanes for sale?

A. Yes, sir; they are.

Q. Are they for sale under the normal terms as you described the other day in your testimony?

A. Yes, sir; they are.

Q. Were they for sale in 1970?

A. Yes, sir; they were. And I offered them for

[3000]

sale at that time—

Mr. Hoffmann: Your Honor, may the witness be confined to answering the questions?

The Court: Yes. They have been since 1970. What is the next question?

Q. Mr. Rudo, have you ever offered Fair Lawn Lanes for sale?

A. Yes, sir; to Mr. Lieblich.

Q. When was that?

A. In 1970.

Q. What did you say to him and what did he say to you on that occasion?

A. On that occasion I told him if he was really interested in buying Fair Lawn, I would be glad to work up a quote for him. He just ignored it and walked away from it.

In fact, it was right out in this hall, right out here. Later, in some testimony I gave, I offered it at that time.

Q. Mr. Rudo, do you know what BCO would have quoted Fair Lawn Lanes to Mr. Lieblich at in 1970?

A. Yes, sir; I do.

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[3001]

Q. Mr. Rudo, in the Spring of 1970, was there any formula being used by BCO for quoting price on a bowling center operated by BCO?

A. Yes, sir; there was.

Q. What was that formula?

A. We took the cash flow, projected it over ten years, with a three percent increase each year. We then developed a cash flow, took a discount for the future price of money, then we multiplied it by .59, and that gave us the selling price. I testified to this the other day.

• • •

[3003]

Q. Do you know when Brunswick commenced operating Ten Pins on the Mall?

A. 1968 as a management contract.

Q. And how long did it operate under this management contract?

A. One year.

Q. Has it operated Ten Pins on the Mall since that time?

A. Since September 1969 as a repossessed bowling center, yes.

Q. What results has Brunswick achieved in the operation of Ten Pins on the Mall since September 1969?

A. We had a positive cash flow ever since we have been there.

Q. Do you know when Brunswick took over the operation of Lodi Lanes in Lodi, New Jersey?

A. In 1970.

Q. Do you know what the results of Brunswick's operation of that center have been?

A. First year we had a small loss, second year we had a loss, which was 1971, and 1972 was a very large loss, and in May 1973 our lease is up, and when our lease is up we will no longer operate Lodi, New Jersey.

Q. When you say your lease is up, are you talking about your lease on the real estate premises?

[3004]

A. Real estate and equipment.

The Court: Wasn't your equipment in there?

The Witness: No, that—I don't know, I don't know what kind of equipment is in there, your Honor.

Q. Did you repossess the equipment in there, do you know?

A. No, we did not. That was leased equipment.

Q. So BCO was operating pursuant to a lease?

A. For someone else, yes.

Q. Do you have an opinion, Mr. Rudo, as to why Lodi Lanes did poorly in 1972?

A. Yes, I do.

Q. What is your opinion?

A. Certain cases when we have taken over and operated for someone else, it is their investment, and instead of—no two people would operate the same, and we have had certain cases where it just has not been compatible, and we feel that this owner did not give us, this owner of the equipment did not give us the leeway to operate and we feel it is better for all concerned.

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[3018]

Q. Mr. Rudo, did you ever tell Mr. Lieblich that you believed that a ratio of 1400 persons to one—1400 persons per bowling lane was necessary for a successful operation of a bowling center?

Mr. Hoffmann: It is leading, your Honor.

The Court: I will permit it.
Did you ever tell him or no?

The Witness: No, never did.

Q. Do you know whether any other Brunswick representative ever told Mr. Lieblich that?

A. I wouldn't know that.

The Court: Are you sure?

The Witness: The fact that I didn't know, yes, I'm sure.

Q. Has Brunswick ever refused to make such a statement when it was asked to do so?

A. Yes, sir, we have refused.

Q. What were the circumstances?

A. Well, in 1960 Bowling Proprietors Association of America was trying to get AMF and Brunswick particularly to commit of a lane ratio per population.

Our company has never felt that such a lane ratio existed. My first education when I went to work for

[3019]

my father back in 1940, he used at that time a thousand people per lane.

But in my own experience, I have found that it varies according to the country. In the South, it would be more. AMF—

[3020]

Q. What do you mean, in the South it would be more?

A. Well, in the South, because of the weather and other conditions it seems to me that a higher ratio of people per lane would be necessary.

Q. Necessary for what?

A. For a successful bowling trend, whereas in the North it could be less.

I remember when in about 1963 I ran a study, Omaha, Nebraska, ran about 300 people per lane, and Rochester, New York, ran about 500 people per lane.

So it varies, there is no definite, can't be—

Q. With respect to those two studies in Omaha and Rochester, were centers successful under those conditions?

A. There has been to my knowledge, there has been very little closing or repossessing in either one of those two towns.

In fact, I can't think of any.

Mr. McNeill: I'd like to ask the reporter to mark for identification these seven booklets as Defendant's Exhibits 41, 42, 43, 44, 45, 46 and 47 for identification.

I will identify each one of these booklets. 41 for identification is entitled "Let's

[3021]

Talk Facts."

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[3023]

The Court: Don't read them.

Q. Mr. Rudo, mindful of the Court's caution and suggestion that these booklets are not to be read, nevertheless can you identify just generally what Brunswick did in preparing each of these booklets and

[3024]

what the gist of what was said was?

The Court: I will permit that.

A. "Let's Talk Facts" is a booklet that was published in 1966, and it was basically to tell the bowling industry why we went into operating of bowling centers and telling the industry what our policies were.

In this book we stated our firm price policy, a firm down payment policy, a 30 per cent down, we discussed how BCO would operate along the 14 points which I testified to, and that we would—we had legal and ethical guidelines, and that we would handle and would pay list prices in BCO for all of the merchandise it bought from Brunswick, and that we would publish our experience as time went on.

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[3032]

Q. What did you tell the proprietors in 1970?

A. We indicated to them that we had become successful, the centers were moving ahead, and business was becoming profitable, and there were cash flows in most of the centers.

[3129]

Q. Mr. Rudo, during 1965, were the centers which Brunswick purchased at the AIBC bankruptcy sale for sale by Brunswick to others?

A. Not in 1965, no, sir.

Q. Why not?

A. Because it had not been finalized by the Court, in the releases, I recall didn't take place until 1966.

Q. When you talk about releases, what is your understanding of that?

A. Where it cleared—it is my understanding that the Court then released them, that they belonged to us completely, and it was—we then had full title to them.

Q. The bankruptcy court?

A. Yes, sir.

Q. Did you advise persons who inquired in 1965 of that fact, about the bankruptcy proceedings for

[3130]

the AIBC centers——

Mr. Hoffmann: Objection. There is no indication that persons inquired about them.

The Court: I will sustain that. No foundation for that.

Q. Did persons inquire about any of the AIBC centers during 1965?

A. Yes, sir.

Q. Did Mr. Lieblich inquire?

A. Yes, sir.

Q. Now, did you advise any persons who inquired during 1965 about the pendency of the bankruptcy proceedings?

A. Yes.

Q. And Brunswick's inability at that time to offer clear title?

A. Yes, sir.

Q. Now, when did this situation end again?

A. In 1966.

Q. At all times thereafter were the former AIBC houses for sale on the same terms as other BCOD centers?

A. Yes.

Q. Do you recall correspondence with Mr. Rudo in April or May of 1965 concerning Bowl-O-Mat's possible

[3131]

purchase of Fair Lawn—

A. Mr. Rudo?

Q. I beg your pardon, did I misspeak?

Let me rephrase that question.

Do you recall any correspondence between you and Mr. Lieblich in 1965, April, May, concerning Bowl-O-Mat's possible purchase of Fair Lawn?

A. Yes.

[3132]

Q. What is the net result of that correspondence?

A. As I recall, it was a matter of advising him that they couldn't be for sale because the matters had not been cleared up; and as soon as they were, as soon as I had releases to sell them, they would be for sale.

Q. Did he ever come back to you and ask for quotes on Fair Lawn?

A. Not that I know of.

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[3133]

Q. Since that time in 1965 have you ever indicated to Mr. Lieblich that Fair Lawn was for sale?

A. As I stated earlier in my testimony, on two occasions, once in this building—twice in this building.

Q. When was that?

A. Once on an examination in 1970.

[3134]

Q. In the spring of 1970, was that?

A. Yes, sir.

• • •

[3136]

Q. Mr. Rudo, are you familiar with the Complaint that has been filed in this litigation by the plaintiffs against Brunswick?

A. Generally, yes, sir.

Q. It is alleged in Paragraph 52 of the Complaint that Brunswick charges low rentals and offers many inducements to bowlers which other operators of bowling centers, who lack the large financial resources of Brunswick, cannot afford to charge, or offer, for as long a period of time as Brunswick can.

Brunswick does so with the purpose and effect of weakening and excluding competition in the market in which it operates bowling centers.

Is that true?

A. No, sir; absolutely not.

Q. Why not?

A. Our intention in operating BCO centers was to make a profit, was to make them viable businesses, so that they can be sold. It is our desire to sell these things,

[3137]

these installations, and it is also our desire to see the bowling industry strong.

Q. What about charging low prices at the centers?

A. I think we have testified that we don't charge low prices. I know our policy. Our policy is to raise prices generally when we go in, or at least maintain them, and to be at the high end of any market we operate in.

The Court: How about low rentals?

The Witness: Low rentals?

The Court: Yes.

The Witness: I don't know what that means, your Honor.

The Court: He just read it to you. You don't understand, you mean, the allegation?

The Witness: Yes, sir. I don't know what low rentals mean. We don't charge low rentals, except where we might rent equipment. And there we compete against other people who rent equipment, and our rental costs are competitive.

By Mr. McNeill:

Q. When you talk about low rentals being charged to bowlers, do you understand that to mean prices for bowling?

[3138]

A. I don't understand what that means. I never heard the term used, rentals to bowlers.

[3139]

The Court: You're telling this jury, though, if it does mean rentals for equipment, your rentals are competitive?

The Witness: Yes, sir, if that's what it means.

Q. Is it Brunswick's purpose to weaken competitors and independent bowling proprietors?

A. Absolutely not. My division of business is basically to sell equipment and supplies, and the biggest part of our business is that. We certainly would be stupid to weaken our customers, and we do not.

Our own record, I think, in that part of our business, indicates that other bowling proprietors don't feel that way because our business has increased.

Q. Paragraph 52 of the Complaint states as follows:

"Brunswick absorbs losses in its operation of bowling centers which could not be absorbed by operators who lack the large financial resources of Brunswick and does not close such centers, with the purpose and effect of weakening and excluding competition in the market in which it operates bowling centers."

Is that true?

A. Absolutely not.

Q. Why not?

[3140]

A. I think the record speaks for itself as to what is going on in the country. We have had losers early in the game. We have worked hard and diligently, our people have, to make them profitable, our record of having only 14 last year, and many of them will be profitable in 1973, and the fact that other people go into competition with us where we presently exist certainly doesn't indicate that they fear us or think that we have any ulterior motive.

Q. Mr. Rudo, it is also alleged in the Complaint in Paragraph 54 that,

"Brunswick is able to install the most modern equipment in its bowling centers, including A-2 devices which Brunswick's competitors for the most part are unable to afford," is that accurate?

A. Well, no, sir, it is not.

23,000 A-2 kits have been sold to bowling proprietors in the United States.

In addition to that, there are three competitors I can think of offhand who sell a kit similar to ours for much less money than ours. Fast ball return out of Texas is made for the A-1 machine, and it is owned by a group of bowling proprietors in that area.

The QBR, quick ball return, out of Spokane, Washington, also a bowling proprietor developed this,

[3141]

and is selling it in the market.

And Zot, out of Denver, Colorado, all of their units sell, our unit I guess—one unit we have sells for about $1,600, another unit we have sells for $1,195, all of these units sell for six to $800, and they have terms and other means, and they have sold these products in the market, and have been selling them for a number of years.

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[3142]

CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. By the way, sir, just on your last answer or question, when did Fast Ball come on the market?

A. In the late 60's.

Q. How late in 1960?

A. I can't tell you.

Q. Very late, wasn't it?

A. I don't know what you mean—

Q. Say 1969?

A. I don't know.

Q. You don't know?

A. No, I would think it was earlier than that.

Q. Do you know how much of it has been sold, how much Fast Ball has been sold?

A. No, sir.

Q. Could be one unit, could be 10,000 units?

A. I would doubt that because they show at various state conventions, and I would guess many more than that.

Q. Many more than one?

A. Yes, sir.

Q. That's a guess of yours, is that right?

A. That's right.

[3143]

Q. You don't know is the answer; isn't that right?

A. No, sir.

Q. You don't know how many have been sold; is that right?

A. I do not know exactly.

Q. You don't even know approximately, do you?

A. No, sir.

Q. No. And when it comes to the Quick Ball Return that you said was put on the market by another proprietors, what do you mean, how many of those have been sold in the United States?

A. Oh, well over 100 that I know, about—

Q. Do you know that they sold more than 100 of those, that would take care of 100 bowling lanes?

A. I would guess that they sold many more than that based on—

Q. Guess, I asked you what you know. Do you know whether they sold more than 100?

A. Mr. Hoffmann, I don't get their records, but I do get to conventions and I do see them in action.

Mr. Hoffmann: Your Honor, may I have a yes or no answer?

The Court: The answer will be stricken as irresponsive.

[3144]

Do you know whether they sold more than 100 or no?

The Witness: No.

Q. What do you know about Zot, do you know what it is?

A. Zot?

Q. Yes.

A. Yes, sir. They have many devices.

Q. Just a second. Is there a Zot machine which is—

The Court: What is it, Z-o-t?

The Witness: Z-o-t.

Is there a Zot machine which is the same or serves the same purpose as the A-2?

A. Yes, sir, as A-2 kit does, yes.

Q. Not the A-2 machine, but the A-2 kit?

A. Yes.

Q. Do you know how many Zots have been sold?

A. No.

Q. Could have been one?

A. I don't know, could have been thousands.

Q. Could have been one, though, because you don't know?

A. Could have been thousands.

The Court: Argumentative. Next question.

[3145]

The Witness: They advertise a lot.

The Court: Let's keep it cool, everybody, including you, Mr. Rudo.

The Witness: Yes, sir; yes, sir.

The Court: He even says that twice, yes, sir.

The Witness: Just for emphasis, your Honor.

Q. Mr. Rudo, do you have any recollection of participating in proceedings before the executive committee of the Bowling Proprietors Association of America at the Sheraton Hotel in San Juan, Puerto Rico, on June 22, 3rd and 6th, 1965?

A. Yes.

Q. Do you know what that committee consisted of?

A. As I recall, it was the executive committee of the Bowling Proprietors Association of America—

Q. Do you have any recollection of having addressed that committee at that time?

A. I didn't make a formal address, but I spoke with them, yes.

Q. I read to you from what purports to be minutes of that committee, and the chairman is talking, Chairman Goldberg is saying:

[3146]

"We are going to skip over our usual procedure of roll call and reading of the minutes of the previous meeting because we have some guests, visitors and friends here, and we will go right to the item that you are interested in. That is listed on my agenda as

Brunswick, BCOD, policies, by Milton Rudo. Milton, you have the floor.

"Is there anybody here who doesn't know Milton after all these years in the bowling business, appearances before us, with his very beautiful pictures?

"Here he is."

Do you remember that?

A. Yes.

Q. Then you were given the floor, and you made some remarks; is that right?

A. Yes.

Q. Do you remember what the purpose of your remarks was?

A. Yes.

Q. What was that?

A. To explain to them why we were involved in operating BCO centers and what our objectives were.

Q. And what your objectives were in operating the centers; is that the meaning of what you just said?

A. Yes.

[3147]

Q. And now, sir, I am going to ask if you can tell us in short form what you said your actual objectives, that is, the objectives of BCOD were?

A. I think I have expressed them here in court.

• • •

Q. That paragraph would you say, yes, in essence, reads as follows, page 6:

"The company recently established a bowling center operations division. In addition to providing economic evaluation, management counselling and promotional aids for bowling proprietors, the division

is prepared to assume salvage measures in the interim——"

[3148]

interim means in between, does it not—"in the interim operation."

A. May I read it? I think I may read it a little differently than you are.

Q. I am reading it, sir, I trust you agree with the words?

A. Not the emphasis.

Q. "The division is prepared to assume salvage measures in the interim operations of repossessed bowling centers in locations with good potentials, pending their resale as a growing business with credit or the operators with proven managerial ability."

Now, sir, those were not only your words, were they?

A. Are you asking me?

Q. These words I just read, they were in the annual report, were they not, which was sent out by Brunswick to the stockholders?

A. I don't know. I don't remember, but they were my words, I said them.

Q. You say, "to get into what our actual objectives are I'd like to read to you now from our annual report which was published on the first of March and was received by 100,000 shareholders, and I quote verbatim."

[3149]

Do you remember that?

A. Yes.

Q. You agree it was in the annual report for that year; is that so?

A. If I said it, it was. I don't remember sitting here that it was. I would presume so, yes, sir.

Q. You next say in your remarks as reported here:

"This was in our annual statement published in March. I realize everyone doesn't read all of the words in an annual statement. We have not kept it as a secret. If any of you were in attendance at our stockholders meeting, as I recall Jack Hanigan was at our meeting and it was later discussed in the Wall Street Journal and other papers, 'why BCOD'?"

Now, sir, you answer in your remarks, why, BCOD, do you not?

A. If that's what it says, I did, you have got the transcript; I don't.

Q. Suppose we read it together, this paragraph.

A. I don't argue with you.

Q. Would you be kind enough to read this aloud? I will stand over here and you can put your own emphasis on it.

A. "After many months of exhaustive study, we established

[3150]

BCOD to operate certain bowling centers whose ownership can't or won't meet their obligations for a variety of reasons. You fellows have run into this, and are aware and know whereof I talk. BCOD will operate these ventures until they are turned over to sincere and financially capable investors. This decision we thought we were compelled to make to protect the interests of our stockholders and to protect the value of your investments as bowling proprietors."

[3151]

Q. Those are remarks which you made, are they fairly reported in which you just read?

A. Yes.

Q. Now, sir, I am going to read you some more from your remarks and perhaps you would prefer, again, to read it yourself, would you rather do it yourself?

A. Whatever the Court wishes I am willing to go along with.

Q. Suppose then I read it, and I promise you it is not the Court's wish, it is just my wish:

"When we decide to repossess and close, that finishes it—"

The Court: Where are you reading from?

Mr. Hoffmann: Bottom of page 9.

Mr. McNeill: Aren't you going to read the next paragraph on page 7 where you just left off?

Mr. Hoffmann: No, I have no intention whatsoever of doing that. I am reading on page 9, Mr. McNeill:

The Court: I will permit it on redirect examination.

Q. "When we decide to repossess and close, that finishes it. After we have evaluated, and if we think it has some potential, our position is to repossess and sell to someone else because it is not the kind of

[3152]

place that we can operate. Either the rent is too high or we don't think it is the kind of place that we can operate from that point of view.

"The size of the establishment, too, has an effect on whether we should operate it or not. We have set as a bottom limit 16 lanes. We would operate a 12-lane house

if it was close to a 16-lane house, and we can have one manager running the two, and it would seem to have a potential, but basically we have started at 16 lanes."

Do you recall having said that, sir?

A. Yes.

Q. Now, sir, you testified under Mr. McNeill's questioning that Brunswick over the years sold off some centers; isn't that right?

A. Yes.

Q. What is the average size, if you know, of a center run by BCOD?

A. In the high 20's.

Q. What?

A. In the high 20's.

Q. Around 30, near 30 lanes?

A. Yes.

Q. Do you know how many lanes Skylark Lanes in Petersburg, Virginia, had in March of 1966?

[3153]

A. I read them off, sir.

Q. You didn't read the number of lanes.

A. I beg your pardon, I did.

Mr. Hoffmann: Your Honor——

The Witness: I don't have the transcript, but I read them off.

Q. If you read it off would you be good enough to supply that number for us, please?

A. May I look at the pieces of paper that I have?

Q. By all means.

A. Skylark Lanes?

Q. Yes.

A. 16.

Mr. Hoffmann: May the record note that the transcript, page 2924, which describes Mr. Rudo's testimony, does not record the number of lanes in Skylark.

Q. Then you sold something called Willow, that had 16 lanes; is that right?

A. Yes.

Q. And Cochise, 16 lanes?

A. Yes.

Q. And Cabrillo, 24 lanes?

A. Yes.

Q. And Portland, 16 lanes; and Stardust, 16

[3154]

lanes; and Lincoln Lanes, 16 lanes?

A. Yes.

Q. And then Brunswick Bowl in San Antonio, 24 lanes; and Ronnell in Sylmar, California, 32; and Rose Bowl, 24; and Bowladrome, 24.

Now, sir, did you use in selling these lanes the formula you described in your testimony today?

A. Yes, sir.

Q. And is that true of all of these lanes?

A. I am not sure about the early ones in 1966, I am positive on the ones from then on, the early ones may not have been.

The two least ones were not.

Q. Now, you spoke of your formula in terms of making an allowance for the dollar or the devaluation of the dollar?

A. No, sir.

Q. You did not?

A. Future price of money.

Q. Future price of money?

A. That's what I said, devaluation had no effect.

Q. You mean if the money is quoted at a price tomorrow different from the price today you made an allowance for that; isn't that your testimony?

A. I'm not an expert on this, but the financial

[3155]

and accounting I have accountants and banking people and they are projecting the use of money out over ten years they discount it based on its value as to what you could use it for today and whether it would bring the returns, that you have it tied up and can't use it.

Now, I'm not an expert in this field. And that's what they try to accommodate in that formula.

Q. Do they not take into consideration what the dollar would be worth ten years from now in making the calculation?

A. No.

Q. You said that the formula was, "We take the cash flow of a bowling center and we project it out over ten years, we discount it for the future price of money, and then we multiply that by 5.9, and that gives us a selling price"; is that correct?

A. Well, the one discrepancy in that, and I made this thing three times, the first thing we do is project the revenue over ten years, and then we take the increase at 3 per cent a year, and then we take that and develop a cash flow and go from there.

Q. What about this phrase, "we discounted for the future price of money," what does that mean?

A. That's just what I tried to explain, sir.

Q. In terms of your adding on 3 per cent?

[3156]

A. No, sir.

Q. What did you try to explain it in terms of?

A. I can't give you any better explanation than I just gave.

Q. I am going to quote this slowly to you, and I will ask you to explain each sentence or perhaps each phrase.

"We take the cash flow of a bowling center and we project it out over ten years."

That's the way you sell a bowling center, is that right?

A. No, sir, I told you that we take the revenue and project it out. I made an error when I made that, and I corrected it twice in my testimony.

Q. When you say you take the revenue——

A. Yes, sir.

Q. —you mean something different by "revenue" from "cash flow"?

A. Very definitely.

Q. What do you mean?

A. The total revenue.

Q. Does that mean the total receipts?

A. Yes.

Q. And the total receipts for a BCOD center, are they different from the total cash flow of a BCOD

[3157]

center?

A. Of course.

[3158]

Q. Is there any more you want to change? You changed cash flow to revenue.

A. We used both, sir. I said we take the revenue, project it out, develop the cash flow over ten years, discount it based on the future price of money, and then applied the five nine formula.

I don't use this formula regularly. I am not an expert in it, except that I have tried to give you some essence of it. That's the best I can tell you, sir.

Q. So that the Court, and the jury, and myself can understand it, you said you changed your testimony about the cash flow to the revenue, and you said you did that twice. Now you say you used both the cash flow and the revenue.

Am I correct in understanding that?

A. No, sir; you are not. You are trying to confuse——

Q. Can we go back over it again, please?

The Witness: Do I have to, your Honor?

The Court: Answer the question. You are on the stand, Mr. Rudo. Answer the question. If you can't answer it, say, "I can't answer it."

A. We take the revenue——

Q. Take the revenue.

A. Yes, sir; at a given year, and project it out over ten years, with a 3 per cent growth factor. We then

[3159]

take the cash flow that would be generated——

Q. You take the cash flow.

A. That is correct, sir. And we project that out over ten years. And then we discount that for the future price of money, which is a standard formula used by financial people and accountants. And then we take the 5.9, and that gives us the selling price.

• • •

[3160]

Q. Mr. Rudo, what you have just been talking about, in relation to the future price of money, is money over the years changing in its value, isn't that what you are saying?

A. No, sir.

Q. Well, for instance, if in the last year you could buy with a dollar 3 per cent more than you buy this year, that's an inflation of 3 per cent, is it not?

A. Yes, sir.

[3161]

Q. And isn't that the process that you are referring to, when you refer to the future price of money?

A. No, sir.

Q. Well, if you have something else that you would like to furnish us as to the meaning of the words, I would be happy to hear it.

A. If I can find it, I will get it, but I——

Q. No, in your own mind. It is your testimony we are talking about. You said the future price of money.

A. I can't do it any better than I have.

Q. Would you do it just once again?

A. As I understand it—and I will repeat this, I am not an expert at this—but I do know it has nothing to do with inflation, or the devaluation of money. It pertains to the investment of money. And it is a fact that it would earn so much if you could invest it every year for the next ten years, and compound it. This pertains to the fact that when you invest it and it is sterile in this one investment, like a mortgage, for ten years, it doesn't gain extra use and bring better returns.

And that is the best I can explain to you, sir. It has nothing to do with this.

Q. Now, this, the best that you can explain to

[3162]

us—and this is the formula that is used in selling businesses, is that right?

A. Oh, yes.

• • •

[3163]

Q. You had a center that lost $12,000, or so, the first year, $8,000 the second year. Apply your formula, if you will, and tell us how you priced that center?

A. Mr. Hoffmann, in a center that was losing money, we would price it at $8500 per lane.

Q. This is something different, this is not, then, what you said, the way you sold your centers when you testified in answer to Mr. McNeill's question, only applied to some situations of profit making, is that right?

A. Mr.—

Q. Just answer the question. Is that right?

A. I didn't understand your question. It got quite involved.

Mr. Hoffmann: With the Judge's permission, maybe the reporter will read the question.

The Court: Read it, please.

(Question read.)

A. I think I said—and I don't remember the exact words—that earlier it took us a while to evolve the formula, and in '66 we were not using consistently the same formula. And if I did mention it, it was only be-

[3164]

cause we did not discuss the fact that there were certain centers sold that did not have a positive cash flow, and those that do not have a positive cash flow, we either leased or we sold at $8500 for the equipment.

Q. I am going to read from your testimony, Mr. Rudo, at page 2930 of the transcript of this proceeding. This is from Mr. McNeill:

"Question: Can you describe how Brunswick arrives at a price which you will quote on one of its BCO centers?

"Answer: Yes, I can generally, because I don't use it regularly, and therefore I am not as familiar with it as I might be if I were using it regularly. We take the cash flow of a bowling center and we project it out over ten years. We discount it for future price of money. And then we multiply that by 5.9 and that gives us a selling price. This usually works out with a 30 per cent down to about a 15 per cent return."

That was your definition. Would you like to change it, sir?

A. No, sir; the only change I would add would be in '66—or where there is a negative cash flow we charged $8500. I never thought of it at the time I answered that.

[3165]

Q. But you would like to change it, would you not, and make that addition?

A. Sir, I would like to add, if that will help clarify the situation, because I have nothing that we don't want out and understood, that where we had negative cash flows in the early years, it would be ridiculous to try to work on a formula—

Q. How about in the later years when you had—

A. Sir?

Q. How about in the negative years when you had negative cash flow; right now, if you have negative cash flow; would you apply this formula?

A. We would sell them at $8500 for—

Q. You are not suggesting, when you put in your previous answer reference to the early years, that there are no presently existing negative cash flow centers?

A. I didn't mean that at all.

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[3166]

Q. And you recall, from your remarks to the executive committee of the Proprietors Association, that you regarded 16 lanes as the bottom for BCOD operations, didn't you?

A. Yes, sir.

Q. And what is the thought behind that remark, that the lower number of lane centers are not very profitable for BCOD to operate?

A. No, sir.

Q. What was the thought about 16 being the bottom?

A. In our early days as we looked at this, and from the analysis I had made in surveying companies like Firestone, who operate their own and compete, and others, there are certain volumes that you have to have, to maintain the kind of structure a big company has, and we arbitrarily picked 16 lanes.

Q. As generating enough volume for you to be

[3167]

interested in it, is that what you are saying?

A. Yes, sir. We still operate 16 lane centers right now.

Q. I beg pardon?

A. We have 16 lane centers right now that we operate.

Q. Do you know how many?

A. No, I didn't count them.

Q. Do you know where they are located?

A. If I went over the list, I could find them.

Q. But you don't know offhand?

A. Give me sometime to look—

Q. You know you operate some 16 lane centers; is that what you are saying?

A. Yes, sir.

Q. It could be one, it could be two, it could be a thousand?

A. No—yes, it could be maybe about five, six, eight. I don't know. I haven't looked recently.

Q. You are getting rid of some over the years, aren't you?

A. Sir, we sell any size.

Q. Sure?

A. Yes, sir.

Q. How many did you sell—over a period of how long a time—1965 to '73?

[3168]

A. We sold 11.

Q. I thought some of those were leased?

A. Two were leased.

Q. So you sold nine; is that your testimony?

A. Yes, sir.

Q. You put in two leased on top of them, but you sold nine, isn't that right?

A. Yes, sir.

Q. Now, Mr. Rudo, will you tell us offhand, and from your knowledge of your own affairs, about how many bowling centers went through the hands of Brunswick over these years, that is to say, how many centers had their equipment repossessed, or the centers taken by Brunswick; do you know?

A. I don't understand your question.

[3169]

Q. Well, let me make it simpler for you.

Do you know how many centers over the years 1965 to 1973 had their pinsetters and lanes pulled out of them because they failed to pay their debts to Brunswick?

A. I know that we evaluated 600. And I know that over a period of years we sold 210 in place that we never took back.

Q. Do you know how many you repossessed, how many lanes—

A. All those 600 we repossessed.

Q. My question is: How many centers and lanes did Brunswick repossess over those years?

Mr. McNeill: Excuse me. I object to the form of the question. He says centers and lanes and asks for a total.

The Court: Do you know how many lanes were repossessed, as distinguished from centers?

The Witness: No, sir; I can only talk—

The Court: Of the centers themselves.

The Witness: What we evaluated, sir. And I don't recall—I know at one time there were 19,000 pinsetters and lanes that had been repossessed.

[3170]

By Mr. Hoffmann:

Q. You do know that, then.

A. I know approximately that, yes.

Q. 19,000?

A. Yes, sir.

Q. Pinsetters and lanes?

A. Yes, sir. And 14,000 were sold to other people.

Q. 14,000 of the pinsetters—

A. —and lanes were sold to people other than BCO.

Q. So on that whole transaction, Brunswick didn't do so badly, it lost out on 5,000 of them, is that what you are saying?

A. No, sir; I think we lost out—I have not worked the calculation. I think we still have not recuperated all of our losses.

Q. Do you know that to be so?

A. Yes, sir. Well, I don't know the actual numbers, no, but that's my opinion.

Q. You don't know that, do you?

A. It is my opinion, from what I do know. I don't know the specifics; no, sir.

• • •

[3175]

Q. Now, I am asking you, do you have any knowledge of what the average amount received by Brunswick was on these pinsetters, during the period of time before they were repossessed, before they were taken out of the

[3176]

center?

A. The only recollection I have, I stated, was that at the time we were going into BCO, where an average contract per lane had run around twelve five, the average owed us was ten eight—this was in '64. And that's all I remember. I can't segregate pinsetters and lanes, because we didn't discuss it in that way.

Q. But that wasn't the moment in history in which the repossession took place, was it; that was the way you looked over the books at the time; is that what you mean?

A. That is when there was an avalanche of repossessions.

Q. But you don't know—you are saying now you don't know how much Brunswick received, on the average, for each of these repossessions?

A. I am saying to you that from what I know, as an executive of my business, that there was ten eight left in the receivables, based on discussions we had in '64, when these things were being repossessed.

So, really, if you want to take an average, you can take it out at seventeen hundred dollars.

Q. You are saying that there was ten eight left in the receivables when you looked over the picture late in '64, isn't that right?

[3177]

A. In '64; yes, sir.

Q. What you looked over was not the 19,000 repossessions record, isn't that so, you were looking over generally the contract and the figures about the contracts which Brunswick had made with the proprietors for the sale of machines.

A. Yes, sir.

Q. So if the next day a payment came in, it would be a payment that would subtract from the total amount of money lost, isn't that right, or the money outstanding, that's correct, isn't it?

A. Well, what you are assuming could be correct; yes, sir. I can't argue——

Q. My question to you goes this way. You did, in fact, repossess machines; you agree to that, don't you?

A. Yes, sir.

Q. Do you know, on the average, how much your customers had paid on the machines which Brunswick repossessed?

A. Not any differently than I stated, sir.

• • •

[3179]

Q. If you sold a center would you get the center back under your contract?

A. Yes.

Q. For nonpayment on the machines?

A. We would get the equipment back and we'd have the

[3180]

option in some cases to consider taking over the center.

Q. Cases would be perhaps where the bowling center proprietor owned his own premises?

A. No, sir, not necessarily.

Q. How do you get to take over a piece of property that's owned by somebody else?

A. We have the right to negotiate with the landlord.

Q. You mean you would have the right to negotiate with the landlord?

A. That's right.

Q. But you could repossess the machines?

A. Yes.

Q. And there is a vast difference between the repossession of machines and of a bowling center, is there not?

A. No, sir.

Q. No, sir? Is that your answer?

When you yanked out 19,000 pinsetters did you yank out 19,000 bowling centers, or the total number of pinsetters divided by the total number of lanes—I'm sorry, if we take 19,000 at base, what is the average lane, number of lanes, in a center?

A. In the U. S.?

Q. Can we go with 20?

A. In the U. S., no, about 17 is the average in the

[3181]

U. S. based on some statistics that I am aware of.

Q. You're talking about 19,000 total pinsetters. How many centers are you talking about?

A. I don't know.

Q. Can you do that arithmetic in your head?

A. No.

Q. About nine to ten thousand bowling centers?

A. Yes, we have testified to that.

Q. Now, those nine or ten thousand, did Brunswick acquire those centers?

A. I don't understand—no, sir.

Q. Well, now, am I to understand your testimony correctly that you are suggesting there is no difference between the repossession of a pinsetter machine and a bowling center?

A. Yes, sir.

Q. That's what you're saying?

A. I am saying there is a difference.

Q. There is a difference?

A. No, sir, what I—well, your question has got me completely confused. I don't even understand what it is.

Q. Maybe it can be read back to you. I think my question is a very simple question, sir.

A. That's a matter of opinion.

Q. Please listen to it carefully when it is read.

[3182]

(Record read.)

Q. Is there a difference between a pinsetter and a bowling center?

A. Yes.

Q. Let's start that way.

A. Yes.

Q. When you repossess a pinsetter is that different from taking over a bowling center?

A. Yes.

Q. You do agree that it is different?

A. Yes.

Q. Now, if you take over 19,000 pinsetters, is that different from taking over 10,000 bowling centers, I mean 190,000—

A. I don't know what you mean.

Q. All right, 19,000, I'm sorry about the numbers, your Honor, I just had a stutter or statter over the numbers.

A. Thoroughly confused.

The Court: Approximately how many bowling centers in the country?

The Witness: About 9,000.

The Court: You say your company has taken over 19,000 pinsetters and approximately 18,000 lanes?

[3183]

The Witness: Yes.

The Court: Are there instances where you take over pinsetters but you don't take over the center, you leave the real estate there?

The Witness: Yes.

The Court: Maybe the liquor license?

The Witness: Yes.

The Court: Now, Mr. Hoffmann.

Mr. Hoffmann: Thank you, your Honor. I am sorry I couldn't come by that myself.

By Mr. Hoffmann:

Q. Now, how many centers, if you know, were actually taken over by Brunswick in the period of time 1964 to 1973?

A. How many centers we took over—centers as distinct from——

Q. No, centers.

A. That we took over to operate, just centers?

Q. If you'd just listen to my question we will have so much less difficulty.

A. I don't know.

Q. You don't know?

A. No.

Q. Who in the company would know?

A. I don't know, sir.

[3184]

Q. You are in charge of this operation of BCOD, are you not?

A. Yes.

Q. And have been right along since the beginning, have you not?

A. Yes.

Q. And you don't know how many centers Brunswick took over from the proprietors over the period of time when you were in charge?

A. We never kept records on centers, sir.

Q. You never kept records on centers?

A. I never saw any. I know equipment that was repossessed in quantity, but I don't know the number of centers.

Q. In answer to a question put to you by the Judge just a couple of minutes ago you understood that a center included real estate, liquor licenses and the like, did you not?

A. Yes, sir.

Q. You kept no records?

A. Includes people, it includes leagues, it includes a lot of things.

Q. You kept no records of that?

A. Of how many centers we——

Q. Yes.

[3185]

A. No, I don't—I have never seen it.

Q. You don't know whether you acquired thousands of centers or only hundreds of centers over those years?

A. We acquired?

Q. Yes.

The Court: Acquired.

Q. Took over.

A. You mean to operate?

Q. You are supplying these words "to operate," I am not.

A. That's all I am trying to find out. I don't know, sir, I don't know how many centers we repossessed equipment from.

Is that what he is trying to get at?

Q. That was not my question.

A. Then I'm sorry.

Q. Mr. Rudo, if I may say so, I think we both understand some of the principles of communication, isn't that true, in the English language, of course?

A. Yes.

Q. Now, Mr. Rudo, in answer to some questions put to you by the Court you replied that you understood the difference between taking over a machine and taking over a center, did you not?

A. Yes, sir.

[3186]

Q. And I have asked you, do you know how many centers Brunswick has taken over, Brunswick or BCOD?

A. I have never seen records on centers. I don't know how many.

Q. Do you know whether you took over more than you operated?

A. Oh, yes.

Q. Do you know that to be so?

A. We repossessed equipment out of centers more than we operated—your question is a confusing one. I can't answer it.

[3187]

Q. It is clear that we understand each other on the difference between a pinsetter and a center; isn't that right?

A. I am not—yes, sir.

Q. And a center includes real estate, either by leasehold or by ownership of the property, does it not, bowling center?

A. Yes, sir.

Q. It includes licenses such as liquor licenses, other licenses from the authorities; is that right?

A. Yes.

Q. It includes in many instances vending machines, settees, carpeting and the like; is that right?

A. Yes, sir.

Q. Now, I have asked you again, and I ask you again, quite apart from whether or not Brunswick operated, do you know how many centers using the description just given which you approved, how many centers Brunswick took over during the years 1964 to the present?

A. No, sir.

Q. You just don't know?

A. No, sir.

Q. And is it also your testimony that nobody in this great organization knows?

[3188]

A. I couldn't tell you. I have never seen any records like that.

Q. If you haven't seen them, where would I look to get an answer to my question?

A. I haven't the slightest idea.

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[3189]

By Mr. Hoffmann:

Q. You do know that the number exceeds the

[3190]

number of centers taken over by Brunswick exceeds the number of centers operated by Brunswick; you know that?

A. Yes.

Q. Do you have any knowledge about how many times, some way of telling us how many more centers were taken over than were actually operated?

A. I would not guess.

Q. You would have no way of knowing that?

A. I wouldn't guess.

Q. Do you think there is anybody in Brunswick who knows that?

A. I wouldn't know.

Q. You are the head of all this, aren't you, the operation of bowling centers?

A. Yes.

Q. And you wouldn't know? Who in your organization would know how many bowling centers were taken over?

A. Sir, the records in that—in that would have been kept in another section. We don't keep records to my knowledge by bowling centers.

I know over a period from 1965 to 1973 we sold 210 that we never operated, and we sold them as centers, but we only had the equipment involved, to other operators. I know, but I don't know how many centers

[3191]

per se we repossessed. I put this 14 different ways now.

Q. Do you know that there were at least 210 more than you operated now; is that right?

A. Yes.

Q. Because you say you sold off 210; is that right?

A. Yes, that we never operated.

Q. That you never operated?

A. That's right.

Q. Do you know what it was you sold off, whether you sold off leases, liquor licenses and the like, for those 210?

A. I told you, sir, we sold or leased our equipment, but we kept them as centers so that the leagues were there, the personnel were there and they didn't have to make changes in the overall environment.

Q. When you say you kept them as centers, you simply mean, do you not, that you didn't pull out your equipment——

A. No, we tried to keep them running so that a new owner would come and take them over and have a business.

Q. They——

A. Would you let me finish?

[3192]

Q. Were they operated by BCOD?

A. No.

Q. You mean to say that this some 210 centers that you permitted the existing operators to operate rather than yanking out the equipment; is that the meaning of your testimony?

A. Part of them in 1963 and '4, until we could repossess them and pull the equipment out or find other people, yes.

Q. So that it was not, never became a Brunswick center, any of those 210, did they?

A. As a BCO center?

Q. Yes.

A. We—the only thing we did was own the lanes and pinsetters and maybe some snack bars, but we kept the business there, and that was the important thing.

The Court: No real estate?

The Witness: No.

Q. No licenses?

A. We may have acquired a license or two at a time to help the situation remain open, I don't remember.

Q. Generally speaking none of that, generally speaking you only had a right to the pinsetters and lanes; is that right?

A. Yes.

[3193]

Q. When you are talking about transferring those 210, all you did was to let the fellow stay there with his bowling center and keep it open without yanking out the machinery; isn't that so, without yanking out the pinsetters and the lanes?

A. Not in all cases. In some cases I remember, I remember one case where a salesman operated it for a short period of time until they could make the transfer, because he had a potential sale.

Q. So what we said is true of 209, not 210?

A. 210, 209——

The Court: This was Brunswick operated in those years; is that right?

The Witness: Yes, BCOD was not in existence.

Mr. Hoffmann: Your Honor, if I may, with great respect, I'd like to clarify the question and answer that your Honor just asked because his prior testimony does not indicate it was Brunswick that operated those 210 centers, with great respect.

The Court: All right. You ask it.

The Witness: We did not operate the centers——

Q. Brunswick did not operate those 210?

A. No, we sold the equipment in those centers and we allowed either to keep them open, Brunswick did,

[3194]

BCOD was not involved.

The Court: That's what I mean, that Brunswick was the corporate entity at that particular time, you did not have the BCO Division?

The Witness: Yes.

Q. But neither Brunswick nor BCOD operated those 210 centers?

A. It may have been a slight caretaker situation case, but basically, no, we did not. We tried to keep them—

Q. You let the pinsetters and lanes stay where they were and they didn't take them out; is that what you're saying?

A. We sold them in place, that's right.

Q. Then you sold them to somebody else?

A. Yes.

The Court: How about a short recess.

(Short recess.)

[3195]

Q. Now, sir, Mr. Rudo, do you know how many centers over these years were acquired by BCOD?

A. I know how many we operated at the end of each year, I could reconstruct it.

Oh, I'd say about between what we closed and sold, maybe 220, 225.

Q. If I put to you that it is 230, I have just made the count, would that be agreeable to you?

A. I don't know how you arrived at that.

Q. By counting from the number of centers listed and given to us on the P and L statements furnished to us by Brunswick.

A. I would—I don't know what you used, I don't know—I can't tell you. Some of these have not been operated during the year, I can only tell you that it is close, I would say that.

Q. You mean it might be a little less?

A. Yes, could be.

Q. You said your number was 220?

A. Around that, 220, 225, and I figured it very fast based on what we closed, what we sold, and approximately what we had to operate.

Mr. Hoffmann: Perhaps I can have agreement with Mr. McNeill and have the number stipulated. I submit to you, sir, that the count of the

[3196]

number of centers on an analysis of profit and loss of BCOD centers which is plaintiff's Exhibit 47, which is the material submitted—taken from material submitted to us, shows a total number of 230.

Mr. McNeill: Mr. Hoffmann, I will not stipulate with you based on plaintiff's Exhibits, but I point out that Brunswick Exhibit 7 shows a total in the first column of commenced operating, and it has totaled these over the years 1965 through 1972, and the total is 222.

Mr. Hoffmann: Perhaps, Mr. McNeill, you'd be good enough to take a look at the profit and loss sheet which you furnished to us and see if that comes out the same so we don't have to take up any more time.

Q. We can agree it is 220 to 230; is that right?

A. 220 to 222 we can agree on, that's what he just read.

Q. Suppose we agree on 220, would you find that a favorable thing for you?

A. Yes.

Q. You will agree on 220?

A. Yes.

[3197]

The Court: That's 1965-1972?

Mr. Hoffmann: Yes.

Q. Now, sir, in this period of time from 1965 through 1972 you sold nine centers; is that your testimony?

A. Yes, sir.

Q. Is that about one a year?

A. It is a little better than one a year, yes, sir.

Q. Is it? Nine centers sold, two leased, was it?

A. Yes.

Q. On the leasing, was there a standard form lease used by Brunswick, did you have a standard system for leasing to complement your system for selling?

A. We only leased the two, and this was approached to us, as I recall. We don't have a standard form of leasing except on the bowling side where we would lease pinsetters, and we have no lease of lanes that I know of, but in thos two, as I recall, these were landlords who wanted to lease them.

Q. Well, sir, you did have your formula for selling, you didn't have a standard form for leasing; is that right?

A. Yes.

Q. In applying your selling formula, did you

[3198]

apply it to any of the nine centers which you testified you sold?

A. Yes.

Q. Well, now, take a look—by the way, do you still have those spread sheets in front of you?

A. I have—

Q. No, these.

A. The ones we sold, yes, I have these.

Q. Would you be good enough to look at Ronnell Lanes in Sylmar, California, 32 lane center?

The Court: What number?

Mr. Hoffmann: 313.

A. Yes, sir.

Q. Lost 25,219 in 1966, lost 34,819 in 1967, it lost 53,205 in 1968, it lost 36,399 in 1969, it lost 56,541 in 1970, it lost 17,186 in 1971.

What formula did you use in that sale?

A. We sold it for 8500 dollars a unit, as it so happens that one was an original sale of lanes and lease on pinsetters which has since been converted to a sale, a modernization and scorers added, so that proprietor evidently feels he can do quite well in that place.

Q. Brunswick with all of its skill and management couldn't, however?

[3199]

A. That's right.

Q. What is this, an optimist that you sold it to?

A. He owns two or three other bowling centers in California.

Q. Do you know the price at which you sold it?

A. I do not have the contract.

Q. Do you have any idea of the price?

A. Oh, the $8500 would have been the basis of the price.

Q. For 32 lanes?

A. Yes.

Q. And that would come out by my quick calculation, $272,000.

A. I have not calculated it. If that's what you say——

Q. I put it to you that that's what it is.

A. All right.

Q. Now, are you suggesting that this man pay over to Brunswick $272,000 for a center that had been losing and lost every year from 1966 through 1971?

A. I am suggesting that he paid more than that because he added scorers and he modernized it with Astro Lanes.

[3200]

he paid for that?

A. Yes.

Q. I'm talking about his acquiring the center at the time he made the acquisition from you.

A. To my knowledge, that would be what he had done, yes.

Q. He paid—are you suggesting to the Court and jury and me that he would have paid $272,000 for a center which had lost $128,000, and had no profit making record whatsoever, whatsoever; is that your testimony?

A. He bought it and he has added, modernized it, and put scorers in.

Q. Do you know how much he paid for it?

A. I don't have the contract, no.

Q. Do you know whether the formula you suggested, negative cash flow——

A. I presume it had.

Q. When you say you presume, does that mean you know?

A. I haven't seen the contract.

The Court: How much did you say it lost over those years?

Mr. Hoffmann: I carry it on the exhibit, a total loss of 128,455 cash.

The Court: Ronnell Bowl?

[3201]

Mr. Hoffmann: Yes.

The Court: $220,000?

Mr. Hoffmann: Yes, on the cash flow exhibit. On the other one it was more, on the total loss on the profit and loss it was more, over 200,000.

Q. Now, sir, do you have any personal knowledge of any of these nine transactions?

A. I have personal knowledge of Rose Bowl, Brunswick Bowl and Bowladrome.

Q. Not the other six?

A. To my knowledge, there is as an executive seeing —I have some knowledge on Lincoln.

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[3205]

Q. Well, now, if we were to go through these various nine sales, am I to understand that you would not know the individual transaction, you would not know precisely what was applied to the figures; is that right?

A. There are two questions there, as I understand it. I would not know the specific transaction, but I do know

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[3206]

as an executive that these men would follow the formula.

Q. And that formula had no variables, no variations, in it at all, always applied in the same way to the sales of these businesses?

A. To my knowledge, yes, sir.

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[3210]

Q. These salesmen, do you know how many salesmen there are in that division that you have just described?

A. Yes, sir, about 60.

Q. And do you know how many have entrusted to them the matter of selling bowling centers, BCOD bowling centers?

A. All of them have some part, and six or eight have a very definite part.

Q. Are you suggesting that 60 salesmen worked from 1965 to 1972, about nine years, and produced nine sales; is that what you're saying, of bowling centers?

A. That's what I'm saying, yes, sir.

Q. Any reasons why they were so hard to sell?

[3211]

A. The only reason that I stated, sir, and—is the fact that there is a lot of used equipment on the market, it can be bought a lot cheaper than we are willing to sell ours, and there is much of this being purchased.

I showed you ads, I had them here the other day, they have gone back to 1966, there are many people in the used equipment business.

Q. Now, you went into the bowling business for salvage, isn't that right; isn't that what happened in 1965?

A. Yes, sir.

Q. And your idea of salvage according to what you said, what you had to say to the executive committee of the BPAA in San Juan, was to take over and rehabilitate centers, make them good going concerns, and then sell them off; isn't that your idea was?

A. Sell them as businesses, yes.

Q. As going businesses; is that right?

A. Yes.

Q. Did that idea apply, that original idea of yours in 1965, apply to the sales which Brunswick actually made of the nine centers; were those sales an application of your original plan, your intention?

A. That's our intention, yes.

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[3215]

Q. Your policy was to rehabilitate, wasn't it, and then sell; wasn't that the policy you described in 1965?

A. Yes, sir.

Q. And not simply a policy of: We will put our boys to work on it and sell, whether we rehabilitate it or not?

[3216]

A. I don't know how you can do it, except work at it.

° ° °

[3217]

Q. 220 centers operated by Brunswick at different times, from 1965 to 1972, nine were sold,

[3218]

is that right?

A. Yes, sir.

° ° °

[3222]

Q. Were your salesmen under any instruction as to the particular centers which they sold off, were they told to sell these centers rather than selling other ones, do you know?

A. Early in our first operation, in the early years of BCO, we would give a list to the Bowling Division, and they would try to work on those, because we felt they were scattering their shots.

And in recent years we have just let it open and they have no assignment. They can get a quotation on any bowling center they want, any time they want.

Q. Skylark Lanes in Petersburg, Virginia, how many lanes did you say there were?

A. 16, sir.

Q. The first four transactions that you had were Skylark, Willow, Cochise—

[3223]

A. That's three.

Q. I'm sorry. Skylark, Willow, Cochise—the first six transactions—Skylark, Willow, Cochise, Cabrillo and Portland Lanes.

Is there any significance to be drawn from the fact that five out of those six transactions involve 16 lane centers?

A. Not in my mind.

Q. Do you know anything about the instructions which were given to your salesmen as to which centers should be sold during that period, 1966 and '67?

A. To my knowledge, there were no instructions given to them to sell any size bowling center.

Q. Well, they were given lists, weren't they, of some sort, isn't that what you just said?

A. Yes, sir; in the early days.

Q. And those lists would have the names of the centers on them, wouldn't they?

A. Yes, sir.

Q. And those centers which they were given to sell included these six centers, did they not?

A. I don't know.

Q. You don't know?

A. No, sir. They may not have.

Q. Even though they were given the list?

[3224]

A. I know they were given lists.

Q. Were they free to sell as they please?

A. Yes, sir; but they were given a list to give them some guidance.

Q. You have no way of knowing or remembering whether or not these names appeared on the list given the salesmen at that time?

A. I don't know.

Q. Do you remember what the instructions were in connection with the lists given the salesmen?

A. No, sir; it's been a long time.

Q. Could those instructions have said: Try to sell the following bowling centers—and then named them?

A. Yes, could have said that. Yes.

Q. Is that consistent, as you can remember, with the sense of them?

A. I don't remember.

Q. You don't remember. Do you remember whether or not the instructions said: Confine any sales of bowling centers to the names of the centers on these lists?

A. Yes, sir; I remember that they did not say that.

Q. You remember that they did not.

A. Yes, sir.

[3225]

Q. But you don't remember what was on the instructions?

A. That is correct, sir.

Q. Do you remember whether or not the instructions said: Don't sell any centers which have more than 30 lanes.

A. I don't.

Q. You don't remember?

A. No, sir.

Q. As to that, you don't remember?

A. That is correct, sir.

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[3228]

Q. Were you in 1966 and '67, you personally—you, Mr. Rudo—in charge of BCOD?

A. Yes, sir.

Q. Who was in charge of getting up the lists for the sales people to work from, do you know?

A. Well, our people worked with the sales department, which did not report to me in '66. When they put a list together, I would see it occasionally.

Q. Your people put a list together, you saw the list, is that right?

A. Occasionally; yes, sir.

Q. But you don't remember what was on the list, is that your testimony?

A. I don't remember the specific names of each center; no, sir.

Q. Do you remember anything at all about instructions given to the sales people as to the use of that list?

A. Yes, sir.

[3229]

Q. You do remember?

A. Yes, sir.

Q. What do you remember about that?

A. That they were not limited to these.

Q. Anything else they were not limited to?

A. Not that I know of.

Q. And anything about their conduct in handling the transactions, anything like that given to them?

A. No, sir; it was a list of bowling centers that they were recommended to sell—period.

Q. The list was now a recommendation for sale, is that your testimony; you recommended that they sell these centers, is that your testimony?

A. I thought I said the same thing all along, sir.

Q. I thought otherwise.

Mr. Rudo, do you remember that this was a list of centers that was recommended for them to sell; did the recommendation appear on the list, on the piece of paper,

did it say on top, for example: We recommend that you sell the following named centers?

A. I don't remember the words.

Q. Well, did something about that appear on the piece of paper that contained a list of names?

A. I don't remember. I didn't put it out.

Q. But you do remember, even though you didn't

[3230]

put it out, that there was no restriction on the bowling centers that could be sold?

A. That is correct; yes, sir.

Q. What makes you remember that?

A. Because there was none.

Q. You know that to be so?

A. Yes, sir.

Q. Did you give the instructions to the sales people?

A. No, sir.

Q. Do you know who did?

A. Whoever the sales manager was back in those days.

Q. Well, be that as it may, the facts show, do they not, that in the period of time when your first sale—in March of '66 through 1967, there was nothing—with one exception—but 16-lane centers sold, that one exception being Cabrillo Lanes, is that right?

A. That is correct.

Q. And then your next transaction, after the one last in '67, doesn't take place until May of '69, from your own testimony. Do you know whether your sales people were busy during that year and a half trying to sell BCOD centers?

A. We were trying to sell a lot of things in those days. Their responsibility was more than just selling

[3231]

BCO's.

Q. Do you know whether they tried to sell BCOD centers?

A. Oh, yes, sir; I know that we made quotations.

Q. Then you sold a center, Lincoln Lanes, in Merrill, Wisconsin, in May of '69. Do you know how many lanes that center had?

A. 16.

Q. That's the bottom of the barrel for number of lanes, isn't it, according to your own statement?

A. That's not my statement.

Mr. McNeill: Your Honor—

The Court: Just a minute. Yes, Mr. McNeill.

Mr. McNeill: I think the witness has clarified it. Mr. Hoffmann's statement.

Mr. Hoffmann: "Bottom line," is what the witness used. "Bottom line" is the phrase.

Q. What are the largest centers, do you know, that BCOD operates?

A. 64 lanes.

Q. Did you sell anything like a 64-lane center?

A. We only have two, I think.

Q. Do you have any 50's?

A. Two or three.

[3232]

Q. Any in the 40's?

A. Yes, sir.

Q. How many?

A. I couldn't tell you.

Q. Lots in the 30's, isn't that so?

A. Yes, sir.

Q. Was there any 40-lane center sold, any center with 40 or more lanes sold by Brunswick?

A. BCOD doesn't sell them.

Q. By Brunswick. Was there any lane of more than 40 lanes sold?

A. Have we sold since '67 a 40-lane or more——

Q. Yes, that's the question.

A. The bowling side has sold, yes. Not a BCO, but they have sold better than 40 lanes.

Q. Who has sold this?

A. The salesmen.

Q. Are these centers that you are referring to now listed in the centers which were either sold or leased which you gave in your direct testimony?

A. No, sir; you asked me if we have ever sold a better than 40-lane center. And I asked you the salesman. And you said yes.

And we sold equipment to——

Q. Oh, you are using the word, "sold" in

[3233]

the sense of selling any product to the center, is that what you are saying?

A. I am talking about selling a 60-lane center of equipment.

Q. You mean you sold equipment to such a center?

A. Yes, sir.

Q. But heretofore we have been talking about selling the centers themselves, have we not?

A. I tried to clarify it, so I would understand——

Q. Let me clarify it.

Did you at any time—by "you" I mean Brunswick—from 1965 to the present, sell any bowling center, the center itself, where the center had more than 40 lanes?

A. No, sir; we sold only equipment for such.

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[3234]

CROSS-EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Rudo, you said in your direct testimony that you made an offer to sell Fair Lawn to Mr. Daniel Lieblich; is that correct?

A. Yes, sir.

Q. When did you make that offer?

A. I made the offer in 1970.

Q. Can you date it more specifically than that?

A. In the spring. I made it in a bit of testimony that I was giving on an examination, and I also discussed it with him in the hall, and told him if he was really interested we would be glad to——

Q. You are answering the question when, are you aware of that?

And it was in the spring of 1970; is that right?

A. Yes.

Q. And according to your testimony a hearing in this case was going on at that time; is that correct?

A. I was being questioned, yes, sir.

[3235]

Q. Now, you say you made an offer in the course of the testimony; is that right?

A. Yes.

Q. What was your offer?

A. That we'd be glad to sell him Fair Lawn and we'd be glad to get him a price.

Q. When you say you made him an offer, you were testifying; was I interrogating you at the time, do you remember?

A. I don't remember.

Q. But you were answering questions from a lawyer; is that right?

A. That's correct.

Q. In the course of answering questions from a lawyer you made an offer to Mr. Lieblich; is that your testimony?

A. Yes, sir, that we'd be glad to sell him Fair Lawn.

Q. Do you know whether Mr. Lieblich was in the courtroom at the time?

A. Yes, he was.

Q. How do you know that?

A. Because I saw him.

Q. And there you were sitting on the stand answering questions and you made an offer.

Do you remember precisely what your language

[3236]

was when you made that offer; how did you frame your words to make that offer?

A. I don't remember, I don't remember precisely. I offered that I'd be glad to sell him Fair Lawn, we'd be glad to quote him a price; in essence is what I said.

Q. You said you'd be glad to sell him Fair Lawn and what else?

A. Quote to him a price.

Q. Did you quote the price from the witness stand?

A. No, sir.

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[3238]

Q. You didn't say anything about a price in your testimony, did you?

A. No, sir.

Q. So you said, you say, something like this: I'd be glad to sell Fair Lawn to Mr. Lieblich now."

[3239]

Is that right?

A. Words, I am sure you can dig out, I don't remember them exactly.

It was similar to that.

Q. But they were enough for you to say here and now under oath you made an offer to Mr. Lieblich?

A. I was interested to sell him Fair Lawn in 1970, he can buy it, I talked to him outside in the hallway and he never was interested in the price.

Q. Let's come to your talking to him outside in the hallway.

When did that happen?

A. About the same time.

Q. It was in this courthouse?

A. Yes.

Q. And it was in the hallway in this courthouse; is that right?

A. Yes.

Q. Who was present at the time?

A. I couldn't tell you.

Q. Anybody other than yourself and Mr. Lieblich?

A. Could have been.

Q. Mr. Lieblich was present, wasn't he?

A. Yes.

Q. And you made this offer audibly enough so

[3240]

he could hear you somewhere?

A. Yes, he said he was not interested in discussing it at the time.

Q. Physically where were you?

A. Right outside here in the center of the courthouse.

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[3242]

Q. Do you remember anything else, any pleas-

[3243]

antries, social things that might have passed between you?

A. It may have occurred at that time, but I don't remember them. I remember that, because much of the testimony has been that we weren't interested in selling, and we are.

Q. You remember that, because the testimony is that you weren't interested in selling?

A. I have heard that from him and Mr. Dankoff.

Q. Do you have any other reasons for remembering that, besides that, besides the testimony that you weren't interested?

A. Besides what?

Q. Besides the testimony that you just described, which was: You had heard testimony that you weren't interested in selling. That's why you remember it, you just said.

A. I'm sorry, sir. If I said testimony, I am not sure of that. I have heard them make statements in meetings that we were not interested in selling. And that was one of the reasons that I did this. And we would be glad to sell any one, any one of them.

Q. Yes. And I suppose to anybody in the world, if the price is right, isn't that so?

A. Absolutely.

[3244]

Q. And if the price is so high that no sensible man would be interested, you won't sell, isn't that so?

A. So far we have been able to find people.

Q. Yes, you found nine, didn't you, over a period of about nine years. That's what you were able to find, with your prices.

A. Monaco Lanes in Denver sold for $500,000, a 32-lane center. That's higher than we sold Ronnell. It was somebody else that bought it. We didn't sell it, had nothing to do with it. So our price is not so out of line, Mr. Hoffmann, if you know what is going on in the market.

Q. Mr. Rudo, the bowling industry has been good since when, the bowling operator business has been good since when?

A. I don't know what you mean, sir.

Q. Well, it's been profitable in recent years, hasn't it, it has turned from the days of the depression in bowling, hasn't it?

A. The bowling business has had its cycles of good and bad for many years, sir. And it has been good since—oh, '69, '70 it started its upward trend.

Q. '69 or '70. Do you know how many bowling centers Brunswick succeeded in selling since '69 and '70, since the bowling business was good, in its up cycle?

[3245]

A. Is that a question, sir?

Q. Yes, it is. Do you know how many they have sold since the—

A. I didn't hear you, sir.

Q. Since the bowling business became good, which you say was in '69 or '70.

A. We have sold five of the BCO centers.

Q. Are you including the leased ones now?

A. You said '69 and '70, is that right, sir?

Q. Yes.

A. Well, we have sold five since '69.

Q. You sold Brunswick Bowl in May of '71.

A. Sold Lincoln Lanes in May of '69.

Q. I said since '69, '70. Was the business good in May of '69?

A. I think it was getting better; yes, sir.

Q. It was getting better. When do you say the business became good again, after its depression?

A. I am not going to argue with you. We sold—

Q. If you will just answer my questions, there won't be any argument at all.

A. I will try to.

Q. And that is your job, if I may say so.

A. I will try to.

Q. When did business get good in bowling after

[3246]

a depression; is it your testimony that it was good in May of 1969?

A. I think the bowling business had bottomed out in '69 and was starting on its upward trend; yes, sir.

Q. It bottomed out in '69?

A. That is correct. Some people were improving. Our own records show that we were improving.

Q. In '71 you sold Brunswick Bowl, Ronnell Lanes and Rose Bowl; that's three, is that right? And Bowladrome, is that correct?

A. That is correct, sir.

Q. That's four. Four centers in 1971. Did you sell any in '72?

A. No, sir; if we had, it would be on that list.

Q. So you sold, since the business got good in 1969—'69, you think the whole year bottomed out—'69, '70, that's two; '71, that's three; '72, that's four years. You sold four

centers, and if we count Lincoln Lanes in May of '69, you sold five centers, is that right?

A. Yes, sir.

Q. Approximately one a year during the period of time when you say the bowling industry had gotten good again. Sir, how many centers did you have to sell during that period, '69 to the present?

[3247]

A. Somewhere between 165 and 167.

Q. Now, you say there were offers made?

A. Yes, sir.

Q. That was your direct testimony. Do you know how many offers were made?

A. I told you that we had made over 20-some quotes per year. It averages 40, 50.

Q. And against which you sold how many centers, nine?

A. I don't understand your questions. I sold nine from the beginning—yes, sir.

Q. And you say there were offers made about 20 times a year?

A. There were requests for prices.

Q. And were the prices quoted in response to those requests?

A. In every one of them.

Q. And they succeeded in producing nine transactions of sales, is that right?

A. We had more transactions, but some people could not—

Q. Of sales?

A. Of sales; yes, sir. That actually were consummated in sale; yes, sir.

Q. And if there were 20 a year for a period

[3248]

of nine years, that's 180 inquiries over the years, is that about right, against which you sold nine. Now, sir, in recent years, if you failed to sell more than one a year, it wasn't because of depression in bowling, isn't that so? We just learned that there was an upswing starting in '69, isn't that correct?

A. Yes, sir.

Q. Could it have been the price, Mr. Rudo, could it have been that the price was too high?

A. No, sir.

Q. You shake your head and you say no, sir.

A. That's correct.

Q. What other factor do you know of would discourage people from buying bowling centers at a point in time when the bowling business is good, other than the price?

A. I have stated this once in your questioning this morning, sir, and once at Mr. McNeill's statement. There are hundreds of units in the field as used. Our business quotations indicate there are good returns—we have checked this with all the financial people we can, to make sure we are fair—I am convinced in my mind we are fair. I am convinced that the used equipment that exists in the United States has hindered the sale of this.

[3249]

And the fact, also, that existing bowling centers are for sale have hindered the sale of our units.

Q. Well, sir, we are talking again of the sale of bowling centers, aren't we? That's all we are talking about now, isn't it?

A. Yes, we were not talking equipment, because we have been selling equipment to new centers.

Q. You have been selling equipment?

A. Yes, sir.

Q. And I have been asking you how come it is that you haven't sold more bowling centers than you did sell. That's what we are talking about, is that right?

A. Right. Yes, sir.

Q. I put this question to you, Mr. Rudo. In the last three years—1970, '71 and '72—has your correspondence, in which you made price quotations to prospective customers, reflected the fact that the purchaser—prospective purchaser has said, "I will not go through with the deal you propose because the price is too high"?

A. There have been occasions when that happened.

Q. You don't give out a price quotation unless you are asked for one, do you?

A. I don't get involved in it, so I can't answer that

[3250]

question. I presume our salesmen think they can sell one and will ask for price quotations so that they can quote it to someone.

[3251]

Q. I am not quite sure what you mean when you say you don't get involved with it.

A. I don't sell bowling centers.

Q. Here you said in 1970 you sat on the witness stand, that you offered to sell a bowling center, that you went out in the corridor of the courthouse to——

A. I did, and I make the offer now, the same thing, and I will have a salesman here within 24 hours to make the deal.

I don't get involved in making direct sales any more.

Q. You just get involved in making offers; is that it?

A. That's not an offer. It shows that I am interested in selling it.

It is not a specific offer.

Q. Oh, it is not an offer that you made on the witness stand; is that what you're saying now?

A. No, you are just trying to confuse me with words.

Q. Maybe I don't have to—well, I won't say anything.

Mr. Rudo, you say you went down the corridor of this courthouse and made an offer to Mr. Lieblich?

A. That we were interested in selling Fair Lawn to

[3252]

him.

• • •

[3254]

Q. Well, my question is did you make the offer to Mr. Lieblich or anyone else any place in the world after April 1970 for the sale of Fair Lawn?

A. Did I?

Q. Yes, did you?

A. No, sir, that I can remember.

Q. And do you know whether anybody else in your organization offered Fair Lawn for sale to anyone since April 1970?

A. I think we have quoted on it, but I don't remember.

Q. You just don't know; is that right?

A. No, sir, I think we have quoted on it, but I don't remember specifically.

• • •

[3255]

Q. Now, Mr. Rudo, can you tell us whether or

[3256]

not Interstate Lanes was for sale?

A. Yes.

Q. Is for sale?

A. Yes, it is.

Q. Can you put a price on it?

A. Would I put a price on it?

Q. Yes, here on the witness stand. You are making an offer.

A. I won't figure that because I am not familiar—but I will be glad to get one for you.

Q. You can't figure it out yourself?

A. Oh, if I would take the time to do it, I am sure I could.

Q. Can you apply the formula which you described in your testimony?

A. I think I could, yes.

Q. I can give you the information about the profit and loss of Interstate Lanes; would that be useful?

I can also give you the cash flow about Interstate Lanes.

A. I'm sorry, I am not going to do it here.

Q. When you say you are not going to do it, you mean unless the Court instructs you to do it?

A. If I were instructed I had to, I'd do the best I could.

[3257]

Q. You could give us the price that you would have quoted to Mr. Lieblich had you quoted a price to Mr. Lieblich because you have written it down; is that right?

A. Yes.

Q. Can you give us any other price that isn't written down on any one of the 165 or so centers which I will be glad to give you which are in evidence here as Plaintiffs' exhibit 48?

A. I remember distinctly Rose Bowl was sold for $502,000, 24 lanes center.

Q. I am not talking about a transaction that took place in the past. You are prepared to make offers in this courtroom, and you were prepared to do it in 1970.

Will you make an offer on any one of these centers, sir, other than Interstate Lanes and—I'm sorry, other than Fair Lawn, and tell us how you reach your offer, what calculation you used?

A. I would be glad to have a price figured for any bowling center you or your associates may be interested in, and have a salesman here who can write a contract and take care of it.

I have not figured prices, I am not about to, but I am interested in seeing that a sale is made, and I

[3258]

would you like to see the color of Mr. Lieblich's checks or yours as a down payment.

Q. And you have with all this interest of yours in seeing that sales are made, you have succeeded in seeing that sales are made nine times; is that right?

A. No—

The Court: Why is the color of the check important?

The Witness: I was using a colloquialism. I was talking about money, I was talking about green stuff.

• • •

[3259]

Q. If your prices are so sincere, so legitimate, how was it possible that over nine years you only sold about a center a year out of some 200 more, 220 was the figure we agreed on, centers which Brunswick offered?

[3260]

You did better with bowling balls, I am sure, than one a year.

The Court: Let him answer the first one.

(Record read.)

A. I have answered this question twice or three times this afternoon, sir. It was my opinion that the equipment on the market, and there are hundreds and thousands of units available, have hurt the sale of any of our units—of any of our centers, and this is my feeling.

• • •

[3261]

Q. Mr. Rudo, I show you what has been marked as Plaintiffs' 67 for identification.

Can you by looking at it tell us whether that's the copy of the lease which Brunswick entered into with the Rahway Recreation—

A. To my knowledge it is, yes.

[3262]

It looks that way.

Q. Looks like the one Mr. McNeill was examining you about yesterday, doesn't it?

A. I never saw it in the courtroom before now.

Q. Now, Mr. Rudo, I am going to ask you to just look through this whole document with me briefly.

Do you notice the first part of it, ending here with the signatures, in the middle somewhere?

A. Yes.

Q. That is, if you look at it, that is the signature to the lease, is it not?

A. Yes.

Q. And the signature for Brunswick Corporation is your own, is it not?

A. And there are three initials there.

Q. What do those three initials mean?

A. One of them, one's name is Mr. Irons, Mr. Schofield and Mr. Bernard Rudo.

Q. What is the significance of having those initials there?

A. Yes, very important.

Q. What is it?

A. I don't read every document that crosses my desk for signature. We set policies, and the lawyer, I will not sign it unless there is a lawyer's initials and the

[3263]

operating people's initials.

This says to me that they are confirming and conforming with our policy.

Q. Does this mean that while you were signing it there was a lawyer standing by?

A. No, sir, that means he read it over and approved it.

• • •

[3264]

Q. You testified, if I understood you correctly,

[3265]

before in direct examination that you didn't know that there was an option agreement; is that right?

A. I didn't realize what the—I personally did not realize the option agreement was there, yes, sir; I testified to that.

Q. You signed the option agreement and you had your lawyer initial the option agreement, and you didn't know; is that your testimony?

A. That's right, sir.

• • •

Supreme Court, U. S.
FILED
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APPENDIX

Volume 4.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

**PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,**

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

**PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.**

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[3266]

Q. Now, sir, there was this lease with an option clause in it signed by Brunswick, an act of Brunswick; isn't that right?

A. Yes.

[3267]

Q. But something happened in the middle of this trial and you cancelled the option; is that what you said in an answer to Mr. McNeill?

A. I said when I found out about it I had it immediately cancelled.

Q. You mean when you found out about this when the trial was on?

A. I was not a part of the trial at the time it was going on.

I'm sorry, sir, I didn't—that had no influence.

Q. Do you know the date when you had the option cancelled?

A. Approximately April 11, 12, some place in there.

Q. Some place in there?

A. Yes.

The Court: 1973?

The Witness: Yes, sir.

• • •

[3268]

Q. Are you looking at this April 12, 1973 letter?

A. Yes.

Q. Was this letter requested of you by the Rahway Recreation Realty Company?

A. No.

Q. Did they consent to this letter?

A. I don't know, sir.

Q. This letter has to do with part of an agreement, doesn't it, you had with Rahway?

A. Yes, sir.

Q. And part of that agreement had to do with an option which the Brunswick Corporation had obtained to purchase premises during the initial term of the lease; isn't that so, and also a right of first refusal to purchase the premises during any successive term, right?

A. I don't know, I never read the option.

Q. You have the letter in front of you. Isn't that what it says?

A. It says we are not going to do it.

[3269]

Q. But you had an option, did you not, before you said you weren't going to do it?

A. I don't understand what you're saying, sir.

Q. You know, Mr. Rudo, I am going to make it as simple as I can, and I wonder—well, that's not important.

The Witness: I didn't hear you.

Q. Just as well.

Before this letter of April 12, 1973, did Brunswick have an option on the Rahway premises to purchase the premises during the initial term of the lease?

A. I was informed that we had an option, and as soon as I found it out I saw that it was cancelled.

Q. Just answer my question.

The answer is yes, isn't it?

A. Yes.

Q. And before this letter of April 12 didn't Brunswick have a right of first refusal to purchase the premises during any successive term as provided under the lease?

Please answer yes or no.

A. Yes, sir.

Q. Now, sir, this option was embodied in an agreement, a lease, which had two signatures to it,

[3270]

did it not?

A. Yes.

• • •

[3274]

Are you suggesting here and now in this courtroom that that provision slipped past the eyes of your lawyer, that he didn't know that it was there?

A. I can only tell you what he told me, and that's what he told me when I investigated it, that he did not realize it, and he did not intend for it to be—

[3275]

Q. Did he tell you that this typed addendum, this typed agreement, was prepared by the other side; is that what he said to you?

A. I don't remember him saying anything about that, because I never inquired. All I was interested in is when I found out that this was there and it was against policy, that we weren't going to take the option, to eliminate it immediately.

Q. On how many occasions has this policy you refer to expressed itself in the form of leases?

A. It's the only one I know of.

Q. And this policy you are talking about is some kind of policy which applied only once, and that was to this particular addendum agreement, is that right?

A. No, sir.

Q. Well, you just said that, didn't you?

A. The policy—if I understood your first question—the policy is that we are not interested in purchasing any bowling centers. That is a very firm policy.

And if that agreement was made, it was made in error, and contrary to the policy. And that's what I have said, and I tried——

Q. When was that policy reached, when did Brunswick decide on that policy?

[3276]

A. On the 14 points, back when we first started BCO.
Q. And what was that policy, again?
A. That we would not purchase bowling centers.

Mr. McNeill: We can't hear you.

Mr. Hoffmann: I asked the question: What was the policy again? And the answer was: We would not purchase bowling centers.

Q. Is that correct?
A. Yes, sir.

Q. Now, sir, this option related to other matters than just the right to repurchase, didn't it?

A. I don't know. I never read it.

• • •

[3285]

Q. Sir, the language here gives to Brunswick, does it not, the right to in the future, subject to the approval of any authorities having jurisdiction of the liquor control laws, to purchase the said cocktail lounge business, including the said license, the inventory and good will, at any time during the initial term of the lease of the bowling premises, and all

[3286]

additional terms, from owner to Brunswick for $50,000 plus the value of any liquor inventory. That's what it says, does it not?

A. Yes, sir.

Q. And if these conditions come about, Brunswick may, may it not, for $50,000, plus the value of any liquor inventory, obtain the cocktail lounge at Rahway, isn't that so?

A. Yes, sir.

Q. Thank you.

Now, sir, in what sense of the word can this be referred to as a management contract, or a management arrangement, this lease?

A. In what sense?

Q. Yes.

A. You are asking my opinion?

Q. No, I am asking—well, let me ask first: Can this, in your opinion, with some experience in this business, can this agreement be referred to sensibly, in good faith, as a management agreement?

A. Yes, sir.

Q. Does Brunswick enter into management agreements for other bowling centers?

A. Yes, sir.

Q. And those agreements, do they contain a lease

[3287]

of the premises to Brunswick?

A. A lease of the premises; yes, sir.

Q. A lease of the real estate?

A. To Brunswick?

Q. To Brunswick or BCOD.

A. No, sir.

Q. What is this, sir, what is this in my hand, that you just looked at?

A. It's a lease.

Q. Isn't this a lease to Brunswick?

A. Yes, sir.

Q. Do you still persist in saying that this is a management agreement?

A. We have no investment in the properties. We are managing it for Mr. Schmidt, who got old, and whose son did not want to operate it.

• • •

[3293]

Q. Now, sir, I asked you about management agreements. Are these provisions normally found in management agreements?

A. I don't know what provisions you are talking about.

Q. Well, is a management agreement usually an agreement under which Brunswick pays a landlord rent and the landlord operates a cocktail center, with certain restrictions?

A. Under certain circumstances the landlord would operate the cocktail lounge. And we have another one here, Lido, that is exactly that way. And we are going to dispose of it, because it has interfered with the

[3294]

operation.

Q. Did you send out a letter to Lido?

A. No, sir; because we didn't have an option there, to my knowledge.

Q. Then it is not exactly the same, is it?

A. We didn't have an option to buy.

Q. So that is different, isn't it, significantly different?

A. I think so.

Q. Now, sir, do you call this, in normal terms, used by you and others in the bowling business, a management contract?

A. In my opinion; yes, sir.

Q. What about this Brunswick form? It says on top Brunswick Bowling Establishment Lease. Are we to disregard that and read, instead of it, "Brunswick Management Contract"?

A. You can read it any way you want. It says the——

Q. Does it say anything about it being a management contract in the whole document?

A. I would doubt that it does. But, in my opinion, based on what little knowledge I have of this situation, this is being managed for Mr. Schmidt.

• • •

[3310]

Q. Is there any particular reason that you had for singling out what it was you wanted to have terminated; was there any particular reason for terminating what you think you terminated by that letter?

A. Yes, sir.

Q. "Yes, sir"? Is that your answer?

A. Yes.

Q. What was that reason?

A. To stay within our policy, that we were not going to buy any centers.

[3311]

Q. You were not going to buy any centers; is that right?

A. That's right.

Q. Your policy, what policy are you referring to, the policy you described before?

A. We have had that as a policy, that we would not buy centers, and we just live by it.

Q. Did you have that as one of the 14 points, do you know?

A. I think it is part of it. I would have to read them to do it, but I know we have had that policy.

We have lived by it, and we intend to continue to live by it.

Q. Let me read to you one of the 14 points, perhaps this is what you have in mind.

Number 5, "Brunswick Corporation should not acquire any existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys unless it should appear that such establishment had become a failing business and that the operator had requested Brunswick to take it over."

That's Number 5.

Is that the policy provision that you think relates to this Rahway matter?

A. Well, that's where I testified to that Rahway

[3312]

matter on the direct examination, sir, that we had a policy that we would not buy centers, we have lived by it, and it is as firmly in my mind as anything I do.

Q. Well, you took a lease for how many years—do you know how long this lease runs?

A. No.

Q. Well, if I supplied the information that it starts on the 16th of July 1970 and ends the 15th of July 1977, does that serve to refresh your recollection?

A. Doesn't refresh it.

Q. You are sure that's correct, aren't you?

A. Yes, I am satisfied that's correct.

Q. And there are also provisions in here for renewal, are there not, for renewal of the lease beyond July 1977?

A. I would presume it is. Most leases we sign are.

Q. And in the center at Rahway you testified earlier there were AMF machines, is that right, pinsetters, lanes?

A. I think there is.

Q. Number 5, "Brunswick Corporation should not acquire any existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys."

[3313]

Sir, did you have any need to or necessity to repossess pinsetters in an AMF equipped center?

A. No, sir.

Q. When you took a lease, and you still have a lease, you acquired, did you not, the existing bowling establishment which was known as Rahway Recreation Center?

A. No, sir.

Q. You didn't acquire it; is that your testimony?

A. No, we are leasing it.

We own nothing in there.

Q. Acquiring means to you only to purchase; is that what you're saying?

A. My interpretation of it is. We are operating the center for a man who requested us to, and he wanted a firm income.

Q. And consistent with the 14 points you could go around the country picking up leases on AMF centers; is that right?

A. That depends on the situation, we could, yes.

Q. You are not acquiring them; is that right?

A. Yes, sir.

Q. Do you know whether the lawyer who wrote these 14 points was writing into No. 5 some provision

[3314]

of law that prohibited you from acquiring centers?

A. I'd suggest you talk to Mr. Seeley, he wrote those 14 points.

Q. I asked you whether you know.

A. Mr. Seeley—

Q. I am not really here to hear your suggestions, I am here to hear your testimony, if I may say so.

Would you please answer my question?

A. Mr. Seeley wrote, I don't know, I'm not a lawyer.

Q. You follow these things, don't you?

A. He wrote them.

Q. You reverse your lawyers when you think they make mistakes, don't you?

A. No, sir. Reverse them?

Q. No?

A. In the law?

Q. They made a mistake here on the option, didn't they, your own lawyer who wrote his initials down made that mistake; didn't he, and he reversed him, didn't you?

A. That's not the law, sir.

He made an error not following policy, that's correct, sir.

Q. Now, that policy—

A. We corrected it.

[3315]

Q. That policy was a policy that had to do with the application of these 14 points, that's what I understood; is that right?

A. I said that basically our policy is not to purchase bowling centers.

Q. Has that got something to do with the law; is that the reason?

A. I don't know. We made that as a policy early in the game, and we have lived by it.

Q. Policy is not the purchase of bowling centers?

A. That's right.

Q. Have you any policy against acquiring leases on bowling centers?

A. No, sir.

• • •

[3318]

Q. What caused you to do that on April 12, 1973?

A. It had come to my attention, sir, I knew it was against our policies and contrary to what I wanted in operating this business, and I had it done immediately.

Q. It came to your attention the day after Mr. Barron testified about it, came to your attention after Mr. McNeill referred to the Rahway lease as a management contract, and those facts had nothing to do with your decision to write this letter?

A. No, sir, they did not. They had never influenced me.

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[3381]

Q. Now, Mr. Rudo, would you be good enough to look at number 313. You will find a center called Ronnell Bowl, Sylmar, California?

A. Yes, sir.

Q. That was a loser, wasn't it?

A. Yes.

Q. 25,000 more in 1966, 34,000 some in 1967, 53,000 some in 1968, 36,000 some in 1969, 56,541 in 1970, and 17,186 in 1971, and then it disappears from the chart; is that right?

A. Yes.

The Court: What lanes are you referring to?

Mr. Hoffmann: Ronnell Bowl, number 313, your

[3382]

Honor.

The Court: I have got the bowl, I have got the number here, but the figures——

Mr. Hoffmann: I am reading from plaintiffs' 47, which is a profit and loss.

The Court: All right.

A. I am reading from cash flow. I have got the wrong number.

Q. It is also a loser on cash flow, is it not?

A. Yes.

Q. Would you be good enough to take a look at that Ronnell Bowl entry just to make sure that your testimony is clear.

They lost in the figures I gave for each year, 1966 to 1971, did it not?

A. Yes.

Q. Okay. Now, was Ronnell Bowl one of the centers which you sold?

A. Yes.

Q. Do you know who the purchaser was?

A. Yes, sir.

Q. What was his name?

A. Novack.

Q. Do you have any knowledge of why Mr. Novack was prepared to buy this center which had so con-

[3383]

sistently developed a loss over the years?

A. I was not in any part of the deal, sir.

Q. But do you know anything about it?

A. No.

Q. Do you know anything about an earthquake in California in the year of our Lord 1971?

A. Yes, sir.

The Court: Can we have the year without the Lord?

Mr. Hoffmann: Anno domino, A.D.

The Court: Yes.

Q. That earthquake, did you know of any impact it had on Mr. Novack?

A. Yes.

The Court: What was the impact? Are you talking about the earthquake?

Mr. Hoffmann: Yes, sir. That's exactly what I want to know. Exactly what I want to know.

Q. What is it, if you can tell us?

A. He lost his bowling center.

Q. Ah, he lost his bowling center because of the earthquake; isn't that right?

A. That's what I understand.

Q. And that center was nearby to Ronnell Bowl,

[3384]

wasn't it?

A. Yes.

Q. And he had a going business with leagues and bowlers and an earthquake came along and wiped him out; isn't that so?

A. Yes.

Q. And he looks around for a center and what did he find, he found your loser, did he not?

A. Yes.

Q. Do you know what he paid for it?

A. I told you yesterday——

Q. Do you remember today?

A. Yes, sir, I will tell you he bought the lanes, I don't know the price, he leased the pinsetters with option to buy, he had since spent $80,000 in modernizing and put scorers in there. That's all I know, sir.

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[3386]

Q. The 14 points require, do they not, that you should reacquire pinsetters under very special circumstances, you should reacquire pinsetters where you thought you could rehabilitate the centers, and where you could sell them off, isn't that right, to suitable customers when they became going businesses? That's not the exact words, but that's the sense of it, is it not, Mr. Rudo?

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[3387]

A. Yes, sir.

Q. Did your lawyers at any time, in the 14 points or anywhere else, give their blessing to Brunswick leasing bowling centers at different points in the United States?

A. Yes, sir.

Q. Is that advice given by lawyers embodied in any piece of paper that you know of?

A. No, sir.

Q. Was that advice given to you, that it was lawful to do that?

A. Yes, sir.

Q. Did you ask, in respect of Rahway Lanes, whether or not it is a proper thing, under the law, for you to take a lease on Rahway?

A. I didn't specifically on Rahway, but once the policy was cleared by Legal, my people worked with the legal department on each and every one of these.

Q. When did it happen that the policy was cleared?

A. Before the first lease, whenever that was.

Q. Do you know what that lease was?

A. No, sir; I don't remember.

Q. In connection with Gladstone Bowl, did you have that matter cleared by lawyers, the question of

[3388]

taking a lease there, did you have that cleared by lawyers?

A. Yes, sir.

Q. Separately from the others, from the policy?

A. I told you, sir, when we formed the policy, and our legal department approved it earlier, my operating people handled each of these with the lawyers. I don't go each time and find out.

Q. Did the lawyers tell you that they now had a new point to add to the 14 points as to how Brunswick should conduct itself with relation to leases?

A. No, sir.

Q. Do you understand what it is to acquire something; does that word have a meaning for you, to acquire?

A. It does to me; yes, sir.

Q. What is the meaning of "acquire"?

A. Possession, own.

Q. Now, if you have possession of a bowling center, lawfully, someone has leased it to you, under the definition you have just given us, you have acquired it, the bowling center, at least for the time of the lease, isn't that so?

A. No, sir.

Q. You just said possession.

[3389]

A. I said possession and own.

Q. To acquire something you must buy it?

A. In my opinion, it is.

Q. It is not enough to enjoy it, to use it, lawfully?

A. I am telling you what my interpretation is.

Q. Yes, I am trying to—

A. You are trying to change it.

Q. No, I am just trying to fully understand it. You say "acquire" means own?

A. Yes, sir.

Q. And so when, in point number 5 of the 14 points, the lawyers say Brunswick Corporation should not acquire any existing bowling establishments otherwise than through the necessity of repossessing pinsetters or alleys, unless it should appear that such establishment had become a failing business, and that the operator had requested Brunswick to take it over, you say that does not apply to leases, at least for the reason that you don't acquire it unless you buy, is that right?

A. I am saying that our leases, which I feel are management contracts—does not apply and does not violate 5.

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[3392]

operation of that center.

Q. Does he have, do you know, under his contract any right to be involved, unless you want to let him do it—does he have any right under his contract to be involved in the bowling operations at Rahway?

A. I don't know. I have never read, as I said to you, every word in it. But I think he does. And if I had that much invested I would protect it, if I were in his shoes.

Q. Are you still saying here and now, 12:25 on this day of April 25, that you still haven't read this Rahway—

A. I have not.

Q. Nothing that has happened in this courtroom in the last few days has provoked enough interest in you to read it; is that what you are saying?

A. I am satisfied.

Q. You went out to Chicago, you wrote letters about it, and don't read it; and you found that your lawyer out in Chicago let a big error slip by; you said—

A. I don't think it was such a big error, because it was only an option. I don't think it was a big error. It was an option we never intended. It was a mistake, by putting it in, in the first place.

[3393]

Q. You mean it was a mistake in judgment. It didn't happen by chance.

A. It was a potential mistake. It was not a mistake. It was a potential mistake, because it was an option to buy, which we had the right to exercise or not. And we never intended to exercise it.

[3394]

Q. Just a moment, if I may. You have an option to buy. Does the option hurt anybody; does it damage anybody? It sits there in your lease, an option to buy, isn't that right?

A. Yes.

Q. It is there.

A. Yes.

Q. And the lease will expire in due time, and if you don't want to buy, you don't have to, is that right?

A. That is correct.

Q. How does it damage you in any way that it is there?

A. It doesn't.

Q. What is your objection to it? Why should you suddenly, in the midst of this trial, go to Chicago, write a

letter and say, "I don't want the option," are there reasons for that?

A. Yes, because it violated our basic policy of not ever purchasing bowling centers and I wanted it in none of our records, potentially or otherwise.

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[3397]

Q. Now, sir, in connection with the 14 points, are those 14 points still in effect in the operation of Brunswick affairs?

A. As I testified, yes, sir, basically. They are good business philosophy, generally.

Q. Have there been any changes in the 14 points, as far as the present operations of Brunswick are concerned?

A. There have been those that I noted the other day. And there could be some additions that we never added to the 14 points. But basically, we follow the 14 points; yes, sir.

Q. Did you say the other day in what respect the 14 points have been modified?

A. I recall that we testified on some of them. I did cover that.

Q. Can you just briefly jog them off for us now, what the new departures are from the 14 points, what the changes are?

[3398]

A. I can't, all of them; no, sir.

I can tell you basically that on one and two there have been changes from the original because of some IRS regulations which our Accounting Department told us to change.

And that is what I think I stated the other day. My other comments I don't remember specifically. You have the transcript. You probably—

Q. When you acquired a bowling center—by, "you," I mean Brunswick, not you personally, of course—when Brunswick acquired a bowling center, Mr. Rudo, is it your testimony that an evaluation report was made?

A. When Brunswick acquired a bowling center?

Q. Yes.

A. Yes, sir.

Q. And was this evaluation report designed to indicate to Brunswick whether or not it would be desirable for Brunswick to operate the center as a bowling center, as distinct from merely foreclosing and repossessing automatic pinsetting machines and lanes?

A. It had nothing to do with repossessing. The only purpose of the evaluation was to advise the operating group the potential of that bowling center.

Q. At what point in time are you talking about

[3399]

in the history of a bowling center that is being acquired?

A. I am talking about '65, '66, '67.

Q. I don't mean that.

Come with me along this road, if you will. Brunswick finds that the Jones center in Peoria, Illinois, is deeply in debt to it, it owes money to Brunswick for its pinsetters and lanes; at this moment somebody decides, does he not, considers the question and decides whether or not there should be a foreclosure, whether or not the machines should be repossessed, is that correct?

A. Yes, sir.

Q. Where is that done?

A. In the Installment Credit Department and in the Legal Department.

Q. Is that done before there is an evaluation report made as to the center itself?

A. In most cases it was done that way; yes, sir. There could have been cases, when it looked bad, and an evaluation report could have been made.

The decision usually had been made.

Q. You mean the decision had been made to foreclose?

A. Yes, sir; to repossess.

Q. To repossess. Now, you decide to repossess from Jones center in Peoria; somebody in Brunswick

[3400]

says, "Maybe it would be a good idea for us to operate that center," is that right?

A. Yes, sir.

Q. Is that done before or after an evaluation report is made?

A. The decision to operate?

Q. Yes, the decision; does that follow on an evaluation report as to the center?

A. It follows after you get an evaluation report.

Q. What causes an evaluation report to be made? You decide to foreclose, if I understand your testimony correctly, to repossess the equipment.

A. In '65 and '66 and '67, when this was very prevalent, that is what occurred. The Credit Department made that decision, that they were going to foreclose. And the Legal Department, because it was a hopeless case, and they couldn't collect, they usually advised our evaluation group, who went out immediately to evaluate the center.

Q. The evaluation was made as a matter of routine whenever you repossessed it?

A. Yes, sir; as far as I can remember.

Q. So, first you decide then, you are going to repossess, and then you send out an evaluation team; for what purpose?

[3401]

A. To see if this bowling center has a potential to be operated.

Q. And by a potential, do you mean a potential to make money?

A. Yes, sir.

Q. And that would be, of course, to make money for Brunswick, would it not?

A. Yes, sir.

Q. And after an evaluation report is made, someone makes a decision, isn't that so, as to whether or not the center should be operated?

A. Yes, sir.

Q. Who is that someone?

A. It was not one. It would stem to me finally. I had the power to do it or not to do it. But I usually had a committee that worked with me. And we discussed all aspects of it.

The project leader, who made the evaluation, would give us a presentation of the situation and we would arrive at a decision. We would look at maps, lots of things.

Q. Would you consider the matter of population to lane in making that decision?

A. We would consider population, yes, sir.

Q. Population to lanes?

A. Not necessarily.

[3402]

Q. How many people there were in the community, their relationship to the number of people and the number of lanes in the area, was that considered?

A. Yes, sir.

Q. That was a standard part of the evaluation report, was it not?

A. Not that I recall; no, sir. But it could be. It would be mentioned in many cases; yes, sir.

Q. And would it not be mentioned in terms of one lane to so many people?

A. In many cases; yes, sir.

Q. Was that the formula, one lane to so many, a formula which changed from center to center?

A. As I recall the evaluation, sir, they would mention that there was one lane per X number of people in this market. I know of no formula that they recommended.

Q. That was done by some process of arithmetic, wasn't it; you would find out the number of people in the area, and then the number of lanes, and perhaps divide the lanes into the number of people, would that be right?

A. Yes, I would guess so.

Q. And you would come out with a number like 1 to 1,000, or 1 to 1500, something like that, or less,

[3403]

perhaps, is that right?

A. Yes, sir.

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[3408]

Q. Let me ask you this, sir: At any time did Brunswick in its calculation have what might be called a rule of thumb as to what is a healthy relationship between population and number of bowling lanes?

By "healthy" I mean, of course, in economic terms.

A. When I first came with Brunswick, sir, I told you that I worked with, in the early 40's, with some people, one of them being my father who had managed a branch for Brunswick, and at that time he used one per thousand, and that has been around the industry for a long time, but I have not considered it any differently than I would the

other points, and it would be considered, that you would consider in evaluating a location.

Q. Now, sir, excuse me just a minute——

[3409]

this policy of Brunswick as to operating bowling centers for salvage purposes, that's a fair summary of the policy, that they operate for salvage, that is to say, to try and get the debt out of it, and then they will sell it to interested purchasers?

A. That's not our policy, and I have never seen it stated the way you just stated it.

Q. That's not your policy?

A. Not the way you just stated it, no, sir.

Q. How would you state it?

A. Our policy, as I understand it, is to take over a bowling center, make it a profitable business and sell it as a going business.

Q. That's somehow you think different from a salvage, that's not a salvage policy; is that what you're saying?

A. That's our policy. I didn't say it wasn't a salvage policy.

You said we were getting our debt, but we never announced that as a policy.

Q. Have you ever announced the policy that you were just going into the bowling operating business for the purpose of getting what you could from situations where people were in debt to Brunswick, and not for the purpose of permanently going into the bowling operat-

[3410]

ing business; did you ever announce a policy of that kind? whether or not I am using the exact words.

A. You are a long way from what we said, as I recall it, but I couldn't answer that yes or no.

Q. You're talking now about what you said early in the game in San Juan, are you not?

A. I don't know. Are you asking me?

Q. I am asking you simply whether this is a policy, and your answer to my question is you are a long way from what we have said; isn't that what you answered?

A. As I recall it, yes.

Q. What did you, when you said, "we said," where did you say it and when; what is the announcement of the policy you referred to?

A. The original announcement occurred in San Juan, as I recall. We told people we were going into this business, to operate them, make them profitable, and to sell them, as I recall.

Q. And to sell them; is that right?

A. Yes.

Q. Did you indicate to the operators at San Juan that you were going into this business to stay, and if you didn't sell them you'd be there as their competitors; did you indicate that to the operators?

A. We never indicated otherwise.

[3411]

Q. You never indicated otherwise?

A. As I understood your question, we never indicated that we were going to just get out, which is what I think you said, or your question was.

Q. Sir, was there any indication to the operators about your going into the bowling business by the route of building new bowling centers?

A. We told them at the time we had no plans for that?

Q. When did you change your mind about that?

A. In 1969.

Q. And where did that change of mind take place?

A. In our offices.

Q. Who was involved in the change of mind, corporate mind?

A. Me.

Q. Just you?

A. Oh, there were others I had to get permission from, but I changed it.

Q. Whom did you have to get permission from?

A. Mr. Hanigan, Chairman of the Board, I had to tell him what I planned on doing.

Q. Did you get their permission?

A. Yes.

Q. All in 1969?

A. Oh, early 1969, yes, sir.

[3412]

Q. And that was to go into the bowling business through the operation of new centers; is that what you're saying, bowling operating business?

A. Yes.

Q. Did you also get their permission to the leasing of centers built by others, Brunswick's leasing the centers?

A. As a management deal, yes.

Q. When you say, "as a management deal," are you distinguishing it from some other kind of deal?

A. When you say, "leasing centers," I construe, "centers," being fully equipped; is that what you meant?

Q. Yes.

A. Yes, sir.

Q. You got their permission?

A. Yes.

Q. Hanigan's?

A. Yes.

Q. And did you also get their permission to lease centers that had AMF equipment rather than Brunswick equipment in them?

A. As long as we were managing them, yes, for the owner.

Q. That's Rahway?

A. Yes. We have other that we have AMF equipment

[3413]

that we manage——

Q. That's an example?

A. We manage a center upstate.

Q. That's an example, is it?

A. Could be, yes.

Q. That's what you have been saying for several days from the stand.

A. Well, yes.

Q. It is a management agreement; is that right?

A. In my opinion operationally, it is.

Q. And Hanigan approved your taking a lease if you interpreted it as a management agreement on AMF equipment; is that your testimony?

A. Yes, sir.

• • •

[3415]

Q. But the fact is that Brunswick opened how many new centers which it operates itself?

A. Seven, as I recall. I think it is seven.

Q. Now, in all those seven centers, new centers, Brunswick didn't sell any center, did it?

It didn't sell the new center?

A. We didn't sell those centers, no. We offered them to sell. We offered them for sale.

Q. Before you built them?

A. Before we built them, while we were building and

[3416]

after they were complete.

Q. You put up the centers without a customer; isn't that right.

A. Yes.

Q. I understood your testimony a moment ago to be that if there is a customer in the area, you will put it up for him, but is it also your testimony that if there is no customer you will nonetheless put up a center for Brunswick to operate?

A. If we think it has a potential, yes.

Q. That you can do anywheres you think it is appropriate, isn't that right, anywheres you want throughout the United States?

A. Yes.

Q. You find a, what looks like a good site on the side of the road anywhere in the United States, and you can put up a new center there if you like; isn't that so?

A. Yes.

Q. And without having a customer in advance ready to buy it from you; isn't that so?

A. If it has a potentional, yes.

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[3419]

CROSS-EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Rudo, is it your statement that Brunswick

[3420]

has continuously until today tried to follow the 14 points in its conduct of its affairs?

A. Basically, yes. We have modified it on occasion. But we have followed it, as best we could.

Q. And whatever modifications you have made, those are the ones you testified about earlier in this proceedings; are there any other modifications?

A. There may be some. I can't recollect them right now.

Q. And may I ask you whether at any time, when Brunswick took over a bowling center and operated it through BCO, it made some effort to find out whether or not there was any other person or entity in the area who wanted itself to operate the center?

Do you understand my question?

A. No, sir. I missed the first part of it.

Mr. Hoffmann: Perhaps the reporter—

The Court: Read it back, please.
(Pending question read.)

A. Not necessarily, no.

[3421]

Q. Mr. Rudo, when Brunswick leased a center which was being operated by somebody else, can you tell us whether or not Brunswick made an effort to inquire whether or not there were other people who might want to become tenants of any such a lease?

A. I know of no case.

Q. You didn't make an effort; is that what you mean?

Now, sir, when Brunswick built a new center, did Brunswick study the area to see whether or not there existed in the area any competitors of Brunswick, that is to say, customers of Brunswick equipment who were operating bowling centers?

A. Yes, sir.

Q. And did you build any of your seven centers in an area where there was some customer of Brunswick pinsetters or lanes?

A. Yes.

Q. You did do that?

A. Yes.

Q. Then the existence of that competitor customer in that area did not serve to deter you or restrict you in any way from putting up your new center; is that right?

A. If the evaluation indicated there was room for

[3422]

it, no, sir, it did not.

Q. Mr. Rudo, on May 3, 1965, you wrote to Mr. Davis in accordance with Plaintiffs' Exhibit 63 which is in evidence that:

> "Neither the National Bowlers Proprietors' Association nor any other proprietors' association or individual proprietor have any legitimate cause for alarm or concern over operation by Brunswick Corporation of a relatively few bowling establishments."

That's your letter, is it not?

A. May I look at it?

Q. Yes, please. I show you the—

A. May I read it?

Q. Well, if you'd like, but it has nothing to do with my question.

I just asked you a single question about the letter, and I'd like to know what your answer is.

Mr. Hoffmann: Your Honor, the witness is reading the exhibit in extent, so may I ask that he be instructed in advance to answer my question, if he can, yes or no?

The Court: Yes, I so instruct him.

A. May I have the question again, please?
(Record read.)

The Court: Yes or no.

[3423]

A. As it is written there or stated—

Q. You were instructed to answer the question yes or no by the Court.

A. No, sir, because you said national association, and it says Nassau County. It is in the letter. I am trying to help you.

The Court: With the amendment?

The Witness: As Nassau County, yes.

Q. The answer is you did write as follows:

"Neither the Nassau Bowling Proprietors Association nor any other proprietors' association or individual proprietor have any legitimate cause for alarm or concern over the operation by Brunswick Corporation of a relatively few bowling establishments."

You don't challenge that?

A. I don't challenge it.

Only thing I was concerned with was you said "national," as he read it back, and I was just helping you out.

Q. Thank you, sir.

Would you give the same assurance as to the bowling proprietors' association today?

A. Of Nassau County?

Q. Yes, Nassau.

A. Definitely.

[3424]

Q. How about any other society, bowling society of proprietors, would there be some reason in the United States where you would not give them that assurance today?

A. I know of no reason.

Q. In other words, you are prepared to say even now in 1973 that the independent bowling proprietors would have no legitimate cause for alarm or concern over the operations by Brunswick Corporation of a relatively few bowling establishments?

A. Yes.

Q. But you operate many more than a relatively few today, don't you, 160?

A. It is a relatively few out of 9,000, and that's what the calculation—

Q. When you stated this when you wrote this letter, how many centers did Brunswick have?

A. I don't know the date.

Q. May 3, 1965.

A. May 3, 1965, I don't remember exactly how many we had.

50, maybe.

Q. And you were able to describe 50 as "a relatively few."

Do you describe 160 or more as a relatively few?

[3425]

A. Based on the overall market it is few, in my opinion.

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[3426]

Q. Conditions have changed, haven't they, since you wrote this letter in May 1965?

For example, did you build any new centers which you operated at that time?

A. No.

Q. Had you reached a decision about operating which you described before the recess that took place sometime in 1965?

A. No, sir.

Q. At this point in history?

A. Which point?

Q. May 3, 1965. Was it not the purpose of Brunswick to assume the operation of establishments on a salvage basis?

A. Yes, sir, as a salvage basis when we had an avalanche coming in, yes.

Q. Those are different circumstances, are they not, from what exists today?

A. I'm sorry, I didn't hear you.

Q. These are different circumstances as they existed in May 1965 from what they are today, in 1973; isn't that so?

A. Yes, sir.

[3427]

Q. Now, as to the present, as to 1973, Mr. Rudo, would you answer if a letter were written to you by a bowling proprietors' association complaining about the Brunswick operation of centers that they had no legitimate cause for alarm or concern over the operation by Brunswick Corporation of a relatively few bowling establishments?

A. In essence I would write the same thing.

I may not use the word "relatively few," but I would cite our history and how we had not hurt people, and basically I'd write the same thing.

Q. You know that you haven't hurt people; is that your testimony?

A. I feel fairly certain we haven't.

Q. And when Brunswick opened up a center or took over a center isn't it your testimony that it didn't take away business from other centers in the area? Is that your testimony?

A. No, that's not my testimony.

Q. And if it did take away business from other centers in the area, isn't that what you mean by "getting hurt"?

A. It's—

Q. Doesn't that hurt if it takes away business from other centers, doesn't that hurt the center from which

[3428]

the business had been taken away?

A. Yes, but if the center never had the business in the first place, it didn't get it taken away from it because the other center was in existence.

Q. You answered some question that you just asked yourself, because you have already answered my question, didn't you?

A. No, I didn't, I just completed it.

Mr. Hoffmann: I will ask that the last remark be stricken.

The Court: It will be stricken and the jury is instructed to ignore it.

Mr. McNeill: Your Honor, I'd like some clarification as to whether Mr. Hoffmann by "hurt" means competition?

The Court: You are not a witness, Mr. McNeill. No, overruled.
Next question.

Mr. Hoffmann: Thank you, your Honor.

Q. Now, sir, you were asked on your direct examination by Mr. McNeill—I'm sorry, you were asked by Mr. McNeill on page 2880 as follows:

"Question: You say Brunswick has never lowered the price for bowling—" and I think the point of reference we will all agree is when Brunswick was

[3429]

operating a center, taken over a center—"You say Brunswick has never lowered the price for bowling?

"Answer: To my knowledge we have never lowered the price when we took over a bowling center and started operating it. We either stayed the same or raised it."

A. Yes, sir.

Q. That answer was to your knowledge; isn't that right?

A. That's right, sir.

Q. Do you know about all of the transactions taking place in the various Brunswick-operated centers in respect, let us say, to trying to attract a league to come and bowl in the Brunswick center?

A. If it violates policy I know about it.

Q. Who tells you about it if it violates policy?

A. Well, it comes out through our accounting department, our auditors, our outside auditors, our corporate auditors, our accounting firm which—some place over a period of time it's been my experience where there are wrongdoings and violations of policy it will come out.

Basically I would say if this occurs I will know about it. League contracts are signed and registered with the accounting department, our league—many

[3430]

things that occur, and I don't know all of the details sitting here, that would give me by exception any changes.

[3431]

Q. Do you know, for example, whether or not a league has been offered some free bowling in the morning; would you know about that from your accounting records?

A. If there were a reason; yes, sir. And if it were to occur for a reason, we would take—

Q. The price would be the same; wouldn't the price be the same; wouldn't it appear on your accounting records as the same price, even though there were some free games offered if a league bowled with your center?

A. At a given moment, a league bowled and paid nothing? Is that what your question is?

Q. No, that is not my question. Please listen to it.

A Brunswick operated center offers to the league two free games of bowling during the morning, in the event that the league bowlers bowl in the Brunswick-operated center; would that circumstance reflect itself in your accounting record of the price paid to bowl?

The Court: Do you understand it?

The Witness: No, sir.

The Court: Suppose a man is given two free games.

The Witness: If he gave two free games regularly, every week, to a—

[3432]

The Court: Let's say twice a week.

The Witness: In time either we would pick it up in accounting records, through an audit, or something, if it was contrary to policy.

The Court: Are all the sheets filed with you?

The Witness: Not with me personally, no.

The Court: I mean with your company.

The Witness: Yes, sir.

The Court: The score, and the number, and everything, where they keep score on those sheets?

The Witness: Yes, sir. And there are meters on the machines. Every Brunswick center has meters on its machines, and the meter readings come through on the various reports. It would eventually be brought to my attention.

By Mr. Hoffmann:

Q. Has it been brought to your attention that a bowling center operated by Brunswick on the West Coast offers Sunday morning breakfast and three games free for $2.25, and the ad says a complete breakfast; has that been called to your attention?

A. I don't know that it is done. I have not seen anything about it.

Q. And if it exists, you don't know about it,

[3433]

is that right?

A. No. But as I said earlier, I will eventually know about it.

• • •

[3434]

Q. Mr. Rudo, do you have any way of knowing if one of your bowling center managers says, "We will give you free use of bowling shoes if you bowl in our center"?

A. Eventually, we find out, sir. Our auditors, our shopping—I would suggest—eventually we find out; yes, sir.

Q. Now, when you do find out, what happens?

A. We take corrective action.

Q. What is corrective action?

A. It depends on the situation.

Q. Well, have you ever ordered any manager of

[3435]

a bowling center to stop cutting prices?

A. Yes, sir.

Q. When did you do that?

A. Well, when it came to my attention on a situation that was brought into the Court earlier on that aircraft deal, we changed that situation. I changed all the pricing.

And they didn't come back with it, because we wouldn't give them the special deal they requested.

Q. Do you remember what bowling center that was?

A. It was in Sunset Lanes, as I recall, in Avalon. But I know generally what transpired. If we find these things, we correct them, and we change it.

Q. How did you learn about that, here in the courtroom?

A. Mr. Dankoff has been running around the country for seven years talking about that one case.

Q. And you listened to him?

A. I have heard him,

Q. You heard him. And you changed it at Sunset?

A. No, sir; but it was the only case he ever found.

Q. How do you know that?

A. Knowing Mr. —

[3436]

Q. You just said that is the only case he ever found. How do you know that?

A. Very simply. I know Mr. Dankoff well enough to know that if he had other cases he would be talking about them.

Q. Do you know whether or not he has talked about other cases, and right here in this courtroom, and within the last couple of weeks?

A. No, sir.

Q. Do you know that?

A. No, sir.

Q. I put it to you that he did. And in face of that representation, do you want to change your testimony about Mr. Dankoff?

A. I can only tell you what I know, sir. And that's what I told you.

Q. You can also tell us what you don't know, can you not?

A. Yes, I can.

• • •

[3437]

Q. You spoke of Mr. Dankoff talking all over the country about Sunset, did you not?

A. Yes, sir.

Q. What was Mr. Dankoff's claim about Sunset, in connection with prices?

A. That we gave special consideration to a league. I know he made all kinds of allegations that I have never been able to find to be true.

Q. He made these allegations, and you said a minute ago you did something about them, is that right?

A. Yes, sir.

Q. What did you do?

A. We made sure—this was early in our operation—we made sure—and I testified to this earlier in my testimony—when it came to our attention this was early in our operation, and the next year we did not do what had been done which was different than our policy, and we lost the league.

• • •

[3438]

Q. Can you tell us of any disciplinary action which you took in connection with the bowling center—BCO managed centers where their prices were lowered?

A. I don't know of any. So, therefore, I can't,

[3439]

where they lowered the prices.

Q. You don't know of any?

A. I don't know of any lowering the prices.

• • •

Q. Do you have any documents, letters, announcements, posters, sent to different Brunswick operated centers saying, "If you lower prices, you are going to be disciplined," or something to that effect?

A. I don't know. That's handled by the -V.P. of operations, and other people.

Q. You don't know?

A. I establish policy with him, sir.

Q. And you don't know whether there is any such thing, is that right?

A. I know that our people understand the pricing policies and that we are going to be at the high end

[3440]

of the market, and we are going to maintain those policies. This I know.

Q. You have a point among your 14 points, point 10, which Mr. McNeill read to you in the direct case.

"Inducements used to obtain leagues should not be so attractive and persistent as to imperil the business of any existing establishment."

In answer to a question of Mr. McNeill, "What has Brunswick BCO policy been with respect to this point?" you answer that, "We will not do this," that, "We will follow this policy, and we do it."

And then you were asked, "Have you adhered to the policy on that?"

And the answer is, "Yes, sir."

Now, sir, I ask you this. How do you know that this BCO policy, with respect to not making inducements so attractive and persistent as to imperil the business of any existing establishment, how do you know that it has been followed in practice?

A. The contracts are registered. We have auditors that go out and check them. We have auditors and shoppers who bowl to make sure that this is occurring. There is a weekly card that is submitted on this.

There is a daily cash report. We have as many

[3441]

checks as—in the normal course of business, that we can establish to make sure this is adhered to. We stay at the high end of the market.

I am satisfied, on my own trips around the country, and in talking with most bowling proprietors, and in most areas that I visit, that they—they have assured me they feel the same way about our operations. So I am fairly convinced, I am certainly convinced that we do do it.

Now, there may be an occasional case where a slip—as soon as we know about it, we would change it. But we operate 168 centers with about 4,000 people and I

can't account for every one of them, except as establishing policy and doing everything humanly possible to see that they follow the rules and regulations.

Q. And if there are any breaches of that policy, you can do something about it, if you know it, isn't that right?

A. Yes, sir.

Q. And do you know of any breaches of that policy?

A. I can't think of any here, but if it ever occurred, we would take action. I can't think of any here, right now; no, sir.

[3442]

Q. Well, Mr. Rudo, do you know of any disciplinary action, any warnings, or any statements which you might have made to persons within the BCO organization who didn't follow that policy?

A. Sir, I get reports every six months. I get audit reports every time they occur. And I go through this with my operating people. I do not know of any specific discipline; no, sir.

Q. Do you know any more about these inducements than you do know about the cutting of price, would you know more about one than the other?

A. I feel certain we don't cut the price, and that we don't do any inducements that are not done generally in an area.

Q. And the same limitations on your knowledge, as you testified to, as to the cutting of price, would that apply with equal force to your knowledge of special inducements?

A. That I get reports, and I check them, and we follow them; yes, sir.

[3443]

Q. Now, Mr. Rudo, on your direct examination you testified about Dutchess Lanes, did you not?

A. Generally, yes sir.

Q. And if I remember your testimony correctly, you first learned about Dutchess Lanes in 1946; is that right?

A. Yes.

Q. Didn't that have something to do with the employment you had at that time?

A. I was a salesman in Dutchess County, and Dutchess Lanes was one of my accounts.

Q. When did you last see Dutchess Lanes?

A. 1947.

Q. Who was the owner of Dutchess Lanes?

A. The Levine family.

Q. And did you have occasion to see Mrs. Levine in 1946 and '7?

A. Yes.

Q. Was she the one who was operating the center?

A. No, sir. She was there, but the primary day-to-day operation was done by her son.

Q. Was she the ostensible head?

A. She was the owner, but her son ran the bowling center.

[3444]

Q. Did you have occasion to see Mrs. Levine after 1947?

A. Yes.

Q. On many occasions?

A. Well, yes, I saw her; I don't know what you mean by "many," but a few to several time, four or five times, maybe.

Q. In 1970 you were asked the following question, "And you saw it last in 1947?

"Answer: Yes. I saw Mrs. Levine on many occasions after that."

That's so, isn't it?

A. Yes.

Q. That's your testimony, not mine.

A. Yes.

Q. Do you know when Mrs. Levine left the bowling business?

A. I am not certain when she left it. The place had a fire and then it was rebuilt, and she leased it out.

She was the landlord. I'm not certain when she left it.

Q. Do you remember anything about when it had its fire?

A. I would say it was in the late '50's or early

[3445]

'60's, I'm not sure.

Q. The late '50's or the early '60's; is that your testimony?

A. Yes. I think, I'm not sure.

Q. Did there come a time when Brunswick acquired Dutchess Lanes?

A. Yes.

Q. When was that?

A. In 1965.

Q. Do you remember whether or not there was an evaluation report made for Dutchess before the acquisition?

A. I know there was an evaluation made of Dutchess, yes.

Q. And do you know anything about that report, whether or not it indicated a favorable operation?

A. It indicated it had a potential, yes, sir, as I remember.

I haven't read it in a long time. We wouldn't have taken it over if it had not.

Q. Did the circumstances that you had seen the center and had seen Mrs. Levine many times have anything to do with the Brunswick acquisition of the center?

A. I knew Mrs. Levine, and the fact that she was an older lady, and widowed, and owned this property.

[3446]

I knew that. And the fact that this had a potential.

I would guess it may have, yes.

Q. Well, sir, did you learn anything in 1946 or 1947 which led you to believe that Dutchess had a chance to become successful?

A. In 1946 and 1947 it was a very successful bowling center.

Q. And it was then that you saw the center?

A. That's right.

Q. Now, I'd like to read you some testimony and see whether this testimony is approved by you today.

The Court: From where?

Mr. Hoffmann: From page 1473 of the 1970 proceeding, the cross-examination of Mr. Rudo at that time.

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[3447]

Q. "Question: The fact that you had seen the center in 1946 had nothing whatsoever to do with the

[3448]

Brunswick decision in 1965, is that your testimony?"

The Court: Referring to Dutchess?

Mr. Hoffmann: Yes.

Q. "Answer: No, sir.

"Question: It did have something to do with it?

"Answer: I think I said that this morning.

"Question: And what was it that it had to do with?

"Answer: I knew Mrs. Levine. I knew where the bowling center had been located. She had called me during the time that we were evaluating it and I had a sentimental attachment to it because I knew the family. I felt based on what I knew in 1946, 1947, and its location, that it stood a potential chance of being successful.

"I told you also, or I told the Court this morning, that our operating people felt it had been mismanaged and I thought that because Mrs. Levine was getting older, that this was the reason that it occurred.

"Question: What did you do because of your sentimental attachment?

"Answer: The company repossessed the equipment and Brunswick commenced to operate Dutchess bowling center."

The Court: Just a minute.

[3449]

Mr. McNeill: I guess Mr. Hoffmann is not through.

That's nothing inconsistent with what Mr. Rudo said so far today.

The Court: I guess he is bringing out the sentimentality. I don't know what that has to do with credibility, very frankly, if anything.

Mr. Hoffmann: I want to see whether he still affirms the sentiment, your Honor.

The Court: Still feel bad about it, Mr. Rudo?

Q. "Question: In other words, the way you showed your sentiment to Mrs. Levine was by repossessing the equipment in her premises and Brunswick running it, is that it?

"Answer: Not alone, no sir. I told you that I thought the location was good. I remembered it from that; and that our evaluation showed that based on that projection the evaluation team showed that it would make money in the next three years. That was the real basis.

"The sentimental attachment was strictly a secondary aspect to my consideration and thinking."

A. I think——

Q. Would you like to change your testimony in

[3450]

any way?

A. Except I don't think you brought out everything. She was still the landlord, she would still get some income, and that was an important consideration of our sentimentality.

I would not change anything else. I don't know whether you heard me.

Q. You said she would be the landlord?

A. Yes, sir.

Q. Of what?

A. Of the building. We would lease the building from her, we repossessed the bowling lanes and equipment.

Mrs. Levine at that time was well over seventy years old.

The Court: Good bowler?

The Witness: At one time she was. Her son and——

Q. Are you saying, are you affirming your testimony that because she was well over seventy years of age you felt a sentimental attachment, and therefore, repossessed the equipment; is that what you are saying?

A. I didn't say anything like that, sir.

Q. But you did say that in 1970, didn't you,

[3451]

you said it wasn't a primary consideration?

A. You read what I said. I don't think it is necessary to repeat it.

Q. Well, what I read——

A. I don't deny it.

• • •

[3457]

Q. Do you regard Bowlmore as a significant competitor to Brunswick in the sale of automatic pinsetting equipment?

A. I regard them as a competitor.

Q. In the United States?

A. I regard them as a competitor.

[3458]

Q. Is it a significant competitor, a sizeable competitor?

A. I can't answer that directly.

Not particularly, no.

Q. In fact, there is only one sizeable competitor, is there not, in automatic pinsetting equipment in the United States?

A. No, sir.

Q. There is more than one?

A. I think——

Q. Who is your biggest one?

A. I think the used equipment market is the biggest competitor.

Q. I'm talking about the new——

A. AMF. I was only talking about competition for bowling pinsetters on today's market, and over the last seven years the used equipment market is by far the biggest competitor, by far.

Q. Referring again to the new equipment, automatic pinsetters, is Bowlmore a significant competitor in new bowling equipment?

A. There hasn't been a new bowling equipment market since 1963.

Q. Brunswick doesn't sell any now?

A. Very few.

[3459]

Q. Didn't sell any in 1972?

A. Sold some, yes, 1972.

Q. How many, do you know?

A. Well, I can't tell you specifically domestically, because some of our production here went to Japan.

Q. You can't break out the domestic from the Japanese?

A. Not without seeing figures, I could find out quickly.

Q. You don't know offhand?

A. No, I see a lot of figures.

Q. It is an important part of Brunswick's business today, is it not?

A. Yes.

Q. So it couldn't have been just a handful?

A. It was not a handful in 1972, it was a good sized business in the United States.

Q. Thousands of pinsetters?

A. No, not thousands.

Q. Hundreds of pinsetters?

A. Yes.

Q. High hundreds?

A. Yes.

Q. Could be a thousand?

A. I'm not sure domestically.

[3460]

Q. Could be, though?

A. I said high hundreds, could have been 990.

Q. Could have been 1,000, too.

A. I am not going to guess any more than I have. I have done as best as I can.

Q. How many do you figure for Bowlmore in 1972?

A. I said to you they are not as significant an amount. I said that earlier.

Q. So the ony significant one in new automatic pinsetters is AMF; isn't that right?

A. Today?

Q. Yes.

A. Yes, sir.

Q. Now, addressing yourself to used automatic pinsetters, do you have any knowledge of what the percentage is of the total number of used pinsetters are for Brunswick; in other words, if we had 100 used automatic pinsetters for sale in the United States, used, how many of the 100 roughly would be Brunswick?

Mr. McNeill: May I have a clarification of the question as to whether you mean originally made, originally manufactured by Brunswick, or still in Brunswick's hands?

Mr. Hoffmann: What Brunswick made.

A. I have no way of knowing.

[3461]

Q. Would it be roughly 50 percent?

A. I don't know.

Q. When you say you have no way of knowing, do you know over the years whether or not Brunswick didn't make roughly 50 percent of the automatic pinsetters that were made and sold in the United States?

A. I so testified to that.

Q. How about AMF, about what percentage?

A. Between us, we had about—I'd say, 96 percent of the market, and it—maybe Bowlmore had three to four percent.

Q. Isn't the same thing true of the used equipment that's offered for sale?

A. Not necessarily.

Q. I'm asking you about what percentage of that equipment would be of Brunswick make?

A. All I can tell you, sir——

Q. Can you answer that question?

A. No, sir, I can't.

Q. Can you tell me about what percentage of the used equipment available in the United States is of AMF's manufacture?

A. I cannot.

Q. Do you have any reason to suppose that it is any different from the- roughly 96 percent which you

[3462]

ascribed to machines that have been made in the past in the United States, you said 96 percent were either made by Brunswick or AMF?

A. I would guess that there is much less AMF used pinsetters—have been on the market than Brunswick, much less.

Q. Than Brunswick?

A. Oh, yes, sir, on the used market.

Q. I understand.

Now, sir, in connection with Pueblo, Colorado, you testified about a center, Belmont, did you not?

A. Yes, sir.

Q. That came into the hands of Brunswick; is that right?

A. Yes.

Q. I address your attention to plaintiffs' Exhibit 6 in evidence, a letter from Mr. Thomas to Mr. Cebbin——

A. Who?

Q. I think it is C, or maybe G-E-B-B-E-N, R. M. Gebben; does that name ring a bell?

A. Yes.

Q. Is it Gebben?

A. Mr. Gebben, with a G.

Q. Who is Mr. Gebben?

[3463]

A. He used to be our regional sales manager out of St. Louis.

Q. This is a letter dated June 2, 1961.

You were connected with the Brunswick organization at that time in 1961, were you not?

A. Yes.

Q. What were the nature of your responsibilities then?

A. I was vice-president of marketing at that time of the Bowling Division.

Q. Would you be kind enough to note that there is a copy of this letter indicated as having been sent to you?

A. Is that all I have to note?

Q. That's all you have to note.

A. Yes, sir, I note that.

Q. Now, this letter says—by the way, who was Mr. Thomas at that time; what was his function at that time, June 2, 1961, if you remember?

A. He was national sales manager.

Q. "After careful consideration of all of the facts involved in the Pueblo location that you outlined in your letter of May 29, home office has decided that if the contract is submitted to Brunswick, it will be rejected. The reason for this decision is that we feel

[3464]

the economy in Pueblo cannot support an additional 24 lanes at this time.

"In the event that the contract has already been signed by the time you receive this letter will you and Art Covert inform the customer of our decision?"

Do you know anything about the transaction which this memorandum relates?

A. I testified that we turned it down. I made a decision to reject it based on Mr. Lieblich's difficulty in his first season in opening—I don't know what was in Mr. Thomas' mind on it. As far as I know we rejected it, and we hoped, and I later sent Mr. Blanks out there to discourage the people——

Q. The reason for rejecting it ascribed by Mr. Thomas is that, "We feel the economy in Pueblo cannot support an additional 24 lanes at this time;" is that right?

A. I indicated in my—Mr. Gebben didn't agree with Mr. Thomas, I can assure you of that. I have testified to this. I see no problem on that.

Q. You agree with Mr. Thomas, don't you?

A. I didn't say that.

Q. Didn't you just say—

A. I didn't say that. I said we did reject it, yes.

Q. And for the reason——

[3465]

A. That's Mr. Thomas' thinking.

Q. What was your opinion in 1961?

A. My thinking at that time was because Mr. Lieblich had had so much trouble and if it were possible, we had sent Mr. Blanks out there to discourage him from going in, the surveys indicated it could go.

Q. You mean the surveys indicated that you could put in another 24 lanes at that time, and Mr. Thomas wasn't telling the truth; is that what you're saying?

A. Surveys indicated, we later had conflicting reports, and then we decided to hold off and discourage Mr. Bonforte, which we tried.

Q. Mr. Thomas said in words which I hope are clear, "The reason for this decision is that we feel the economy in Pueblo cannot support an additional 24 lanes at this time."

A. Nothing wrong with that. I agree with him. Mr. Lieblich had not done as well. I testified to this.

Q. You agree with him?

A. No disagreement at that point.

Q. Very good.

Did there come a time when the economy of Pueblo in your opinion could support an additional 24 lanes?

[3466]

A. Our people in the Spring of 1962, they went out and worked on the Pueblo Bowl-O-Mat establishment, felt there was a potential for a lot of additional business that was not occurring.

The only reason we took Belmont and I testified to this at this trial, was because of Mr. Lieblich's actions on going to AMF, going to Brunswick, and our Legal Department recommended that we take Mr. Bonforte's deal.

The Court: Let's take a five-minute recess.

[3467]

(After recess.)

The Court: All right.

Mr. Hoffmann: Your Honor, may I have the last question read?

The Court: Yes. Have Mr. Sokol read it back.

(Record read by the reporter.)

The Court: All right. Thank you.

By Mr. Hoffmann:

Q. So does it follow from what you just said, Mr. Rudo, that notwithstanding the fact that Mr. Thomas and you felt that the economy couldn't sustain another bowling center, you were prepared to go ahead and sell?

A. We had reports that indicated the economy could sustain it; the evaluation did. Then we had conflicting reports. Then we sent people out there to promote. And this went over about a year and a half. There was doubt, but there was also a positive aspect.

And based on our experience, but primarily, and the main reason, was because of our legal department's advice.

Q. And was that advice given because of the antitrust laws of the United States?

A. I can't answer that. I can tell you that they felt that because of what had transpired that we would

[3468]

be better off, based on Mr. Bonforte and what transpired, to sell.

Q. You say you can't answer that. Why can't you answer it?

A. Because I don't know what their thinking was, completely. I only know——

Q. You could answer it in 1970, couldn't you?

A. I may have. But I don't remember it right now.

Q. All right. Maybe this will serve to jog your recollection. With your Honor's permission, from page 1493 of the 1970 transcript:

"Question: So notwithstanding the fact that the economy couldn't sustain another center, according to Mr. Thomas, you were prepared to go ahead and sell?

"Answer: Sir, because of the antitrust laws our lawyers felt that there was—this was more important for us. There was a decision and that we should sell it. If necessary, we could take a loss, yes, sir."

A. I said that——

Q. Is that still your testimony?

A. I would not change it now, sir.

Q. Now, sir, did you, in selling it, address yourself to the consideration that the purchaser might be himself forced to take a loss because you and Mr. Thomas believed that the economy could not sustain

[3469]

another 24-lane center?

A. I can't answer that question.
Q. Why not?
A. Because I don't understand it.
Q. You don't understand it, really?
A. Not really.

Mr. Hoffmann: Perhaps, your Honor, the reporter could read it back.

The Court: Mr. Bremer, read it back.

Mr. McNeill: Prior to Mr. Bremer reading it back, I suggest that the question is confusing because it puts in juxtaposition two different time periods. The witness has said that in 1961, June of '61, he and Mr. Thomas agreed about a certain situation. The contract wasn't signed until May of 1962, a year later. And Mr. Hoffmann is trying to juggle those two different time periods into one question.

The Court: Let's hear the question again.

(The question was read as follows:

"Question: Now, sir, did you, in selling it, address yourself to the consideration that the purchaser might be himself forced to take a loss because you and Mr. Thomas believed that the economy could not sustain another 24-lane center?")

[3470]

The Court: Do you understand that or no?

The Witness: No, sir. It gets confusing in time. In '61 we felt this way. In '62 our promotion men were able to increase business. Mr. Bonforte felt this would be successful. He had a tremendous investment. He felt the economy—and based on what we learned in '62, I would guess that it could take it.

The Court: When did you take over Belmont, meaning Brunswick?

The Witness: '65.

By Mr. Hoffmann:

Q. Mr. Rudo, do you know of anything that happened in the year between Mr. Thomas' letter of 1961 and the sale of the center in 1962 which would affect the bowling operations of Pueblo one way or the other?

A. Yes, sir.

Q. What was that?

A. Well, Mr. Bonforte, after we had told Mr. Lieblich in early '61 that we were not going to take the deal, or in that time, called us in October or November, talked to many of our people. He knew of Mr. Leiblich going to AMF and getting them to write a letter that they were not going to take the deal. He knew that we

[3471]

had turned the deal down. So that occurred.

In addition to that, we sent people in to Pueblo who tried to—who increased the business at Pueblo Bowl-O-Mat. And there were many things that happened in that time.

Q. Did the population expand in Pueblo during that period, 1961 to '2?

A. I don't know.

Q. Did the general wealth of the community appreciably increase, do you know, during that period, 1961 and '62?

A. I don't know.

Q. Did interest in bowling increase in that period, 1961-62, in the Pueblo, Colorado, area, if you know?

A. Yes, sir; based on our——

Q. You do know that?

A. Yes, sir.

Q. How do you know that?

A. Because we had promotion people in Pueblo Bowl-O-Mat. They promoted many additional leagues. And they were satisfied that they——

Q. Excuse me. Did you have promotional people in Pueblo in 1965, and '6, and '7, and '8, and '9?

A. I don't know.

[3472]

Q. You don't know?

A. No.

Q. Well, you did know of '61 and '62?

A. I know we sent them out there in the spring of '62 for Mr. Lieblich, specifically to help his business. I know this. We had Mr. Kelly out there——

Q. Did they make Mr. Lieblich's business a profitable business as a result of——

A. They spent almost three months there. They increased his business.

Q. Did they make a positive cash flow out of it?

A. I never saw his—I don't remember seeing his statement. I don't know whether they did. I know that they felt that this business could be improved in that time.

Q. Do you know when you took the order from Bonforte?

A. Sometime in the spring of '62.

Q. Do you know when these promotional efforts were made?

A. Yes, sir.

Q. When was that?

A. In January, February, March, April, May, in that vicinity.

[3473]

Q. In the spring of '62?

A. Yes, sir.

Q. Do you know whether they came before or after you took the order from Bonforte?

A. I don't know.

Q. You don't.

A. I don't remember.

Q. If they didn't come until afterwards, then all you said about this 1961-62 change is wrong, isn't it?

A. No, sir.

[3474]

Q. Well, you attributed an improvement in bowling during that period to the promotional efforts of your people prior to the sale to Bonforte?

A. Our people confirmed that you could increase bowling in the Pueblo Bowl-O-Mat. Mr. Lieblich maintained he could not. We proved that to him. I was satisfied that more bowling promotion could help that town.

Again I repeat to you, sir, the primary reason we sold Belmont Bowl-O-Mat—Belmont Bowl—was because of the activities and our legal department's opinion.

Q. Do you want to change your testimony of 1970 when you said, "Sir, because of the antitrust laws our lawyers felt that there was—this was more important for us. There was a decision and that we should sell it. If necessary, we could take a loss, yes, sir"?

Is that still your testimony?

A. I would not change it one iota.

Q. In selling the center to Bonforte, if I understand your testimony of 1970 correctly, you were doing it because of the lawyers' advice about the antitrust laws, isn't that so?

A. I'm sorry, I didn't hear you. You were facing

[3475]

the other way.

Q. You were doing it, in selling to Bonforte—you, that is, Brunswick, were doing it because of your lawyers' advice about the antitrust laws, isn't that what you said?

A. Yes, sir.

Q. What in the world has that got to do with the 1962 promotional efforts which you have just told us about?

A. Because you, sir, said that the economy was bad, and I was trying to show to you that there was a potential in Pueblo, based on sending promotion men there and achieving results.

Q. Did there come a time when Brunswick itself acquired Belmont?

A. Yes, sir.

Q. And when was that?

A. '65.

Q. And was the economy good enough in 1965 for Brunswick to operate in Belmont, with all its experience?

A. We had no experience in operating bowling centers in '65.

Q. You didn't? I thought your first one was in '64, December.

[3476]

A. In December. And we took Pueblo over, as I remember, early in '65. We had very little experience.

Q. You were Number 1 in bowling, weren't you?

The Court: Belmont?

The Witness: Belmont; yes, sir.

The Court: You said Pueblo.

The Witness: I meant Belmont in Pueblo.

Q. You were Number 1 in bowling, weren't you; isn't that the way you were referred to in '65?

A. That refers to the sale of merchandise.

Q. You had been in the bowling business for how long?

A. In 1965? About 80 years. But never operating bowling centers to the extent we were involved.

Q. Are you sure that Brunswick never operated bowling centers during that period?

A. That's not what I said. I said never to the extent which we were then in '65 involved.

Q. But you had some experience in operating bowling centers, had you not?

A. Not as people who were then doing the job. In 1938, '39, Brunswick operated 12 to 14 bowling centers.

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[3491]

CROSS-EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Just before the recess yesterday, you testified, if you remember, concerning Belmont Lanes, Mr. Rudo, and that when Brunswick started to operate Belmont Lanes you thought that something had been done

[3492]

to improve business by the promotional activities of Brunswick; is that correct?

Is that a fair statement about your testimony?

A. Promotional activities——

Q. Promotional.

A. Yes, sir, for National Bowl-O-Mat, National Bowl-O-Mat's Pueblo bowling center is where the promotion was done.

Q. Wasn't that promotion for the benefit of all bowling in Belmont—I mean in Pueblo?

A. No, sir.

Q. Just for the Bowl-O-Mat center?

A. Yes, if I remember it, that's what it was done for, primarily for that.

Q. Are you aware, Mr. Rudo, of the circumstance that there is an exhibit in evidence here, plaintiffs' 8 which shows that Pueblo Bowl-O-Mat consistently lost money from the year 1961 when it opened right through 1972?

A. No, sir, I am not aware of it.

Q. I show you P-8, if you'd like. Is this news to you that Pueblo Bowl-O-Mat was a losing operation?

A. I don't remember actually knowing about the profit

[3493]

and loss—what the profit and loss statement said. I knew that, as I think I indicated yesterday, that Mr. Lieblich—that bowling center had not done as well as had been anticipated.

Q. Now, what about the Belmont Lanes when Brunswick took it over, did that become a profitable center?

A. I had a cash flow, as I recall, in the first or second years, and then it had a minor cash flow for two or three years, and then it's been profitable, I think, ever since but it is somewhat in that—along those lines.

Q. Well, sir, in terms of profit and loss, Belmont Lanes according to Exhibit 47 lost in 1965, lost in 1966, and in 1967 showed a profit of $1264, then lost again in 1968, 1969 and 1970, and by 1970, it was—in 1969 it was $21,820, in 1970 the loss was $20,213. Mr. Rudo, is there anything in this picture of Belmont Lanes profit and loss which in

your opinion justifies Brunswick for having acquired that center in 1965?

Mr. McNeill: Your Honor, I think to be fair to the witness, he ought to at least have the benefit of having that exhibit in front of him.

[3494]

Mr. Hoffmann: I was about to hand it to him.

A. May I see the cash flow also. The cash flow would justify us keeping it in operation if it had a profit and loss.

And as I recall, it did have a positive cash flow in its early years and then had losses and then was profitable or it had cash flow positive in, I think, I know in 1971, 1972, it was profitable.

Q. Oh, yes, it wasn't even in the cash flow profitable, however, in 1965, in 1968, in 1969 and in 1970; are you aware of that?

A. Yes.

Q. So it did have a positive cash flow in two years, 1966 and 7, and then turned again in 1971 and 1972; is that right?

Do you want to see this?

A. Yes, I would.

The Court: What are you referring the witness' attention to?

Mr. Hoffmann: I am now referring to the witness plaintiffs' Exhibit 48.

The Court: What number is that?

Mr. Hoffmann: 218. I think that's page 4.

A. This is cash flow; is that right?

[3495]

Q. That's cash flow.

A. Yes, sir.

[3496]

Q. Now, sir, you were given advice by your legal department, wasn't that your testimony, in connection with the matter of selling Belmont Lanes to another proprietor?

A. This is when it was originally installed in the summer of '62, is that what you are referring to, sir?

Q. Yes.

A. Yes, sir.

Q. And just briefly, what was the character of that advice?

A. Because of the circumstances that had existed they felt we should sell it.

Q. Did you also get legal advice about Brunswick's acquiring, itself, the Belmont center?

A. Well, the criteria for acquiring centers—and in most cases the legal department sat in on our evaluation discussions—I would presume; yes, sir.

Q. Do you have any recollection of it?

A. Of that specific incident; no, sir.

Q. Do you normally receive an opinion from your legal department each time when Brunswick acquires a bowling center?

A. In most cases, but not necessarily each time.

Q. Do you recall any particular opinions received concerning the acquisition of a bowling center

[3497]

in the San Fernando Valley in California?

A. Yes, sir.

Q. What was the nature of that opinion, sir?

A. The legal department told us not to take that.

Q. And do you remember why?

A. Yes, sir; they felt that we would be better off, in that particular market, because of its size, and because of our recent acquisition of two or three bowling centers, not to take it.

Q. Did they give you any formalization of size which would make it improper for you to acquire the center in the San Fernando Valley of California?

A. No, sir; not to my recollection.

Q. Perhaps this will serve to refresh your recollection, from page 1548 of the transcript on April 9, 1970.

"Question: And did you receive an opinion from your legal department every time Brunswick acquired a bowling establishment?

"Answer: Not every time, no, sir.

"Question: And did you recall any particular opinion you may have received concerning the acquisition of bowling establishments?

"Answer: Yes, sir.

"Question: What are those?

[3498]

"Answer: It was a case in San Fernando Valley that we had repossessed many bowling centers and that we may have too many in the market, therefore, we should not, despite the fact that our evaluation showed this could be a good center, we should not operate and we did not. We pulled the equipment.

"Question: Is that because of some opinion of the legal department?

"Answer: Yes, sir.

"Question: Do I understand you to say the legal department is saying that there was overbuilding in

the San Fernando Valley and for that reason you shouldn't operate a center? Is that what you are saying?

"Answer: No, sir.

"Question: Would you say it again, please?

"Answer: I said that the legal department felt that we had repossessed a great number of bowling centers and that we were operating too large a percentage in that market in their opinion. It was about twenty-five percent, and that we should not take any more over that we had to repossess to operate. They suggested to us that instead of taking this particular bowling establishment——

"The Court: Hold it, aircraft."

Then the witness continues. "—and operating

[3499]

it; that we pull the equipment. We tried to sell this equipment. We left it in that place because the landlord, the owner of the building was most anxious to keep some tenant in there. That equipment sat in that bowling center for over a year. I think just recently has been pulled out. We have never operated it and it was on the advice of our legal department that we not do it."

Sir, having read that, does that serve to refresh your recollection?

A. Yes, sir.

Q. Now, this percentage of 25 per cent to which your lawyers referred——

A. I referred to that, sir. It was my opinion, as I understand the testimony.

Q. I read again from the bottom of page 1548 to the top of page 1549 of the transcript of April 9, 1970.

"I said that the legal department felt that we had repossessed a great number of bowling centers and that we were operating too large a percentage in that market in their opinion. It was about twenty-five percent, and that we should not take any more over that we had to repossess to operate."

Are you saying this was not the opinion of your

[3500]

legal department, but your own conclusion?

A. No, sir; I said the 25 per cent was my comment. I don't ever remember the legal department telling me that 25 per cent was—that I should not take more than 25 per cent of the market.

Q. When you said it was about 25 per cent, were you referring to the situation as it existed in the San Fernando Valley at that time?

A. That is correct, sir.

Q. And it was there that the legal department advised you that you shouldn't take on any more, isn't that right?

A. At that time; yes, sir.

Q. At that time. And had they not also advised you that you were operating too large a percentage in that market?

A. Because we had taken on three of them in a very close period of time.

Q. And it totalled 25 per cent; is that your testimony?

A. As I remember it; yes, sir.

Q. Now sir, was the opinion expressed to you that if you operated more than—say, more than 25 per cent, in here, you would be violating the antitrust laws?

[3501]

A. No, sir; not that I remember. They felt that we would be cautious by taking only 25 per cent.

[3502]

Q. Did they feel that if you did more you would create some question concerning the propriety of your action under the Anti-trust laws?

A. They felt—under the Anti-trust laws?

Q. Yes.

A. They may have had that in their mind, sir, I guess they may.

Q. Well, you didn't go ahead and operate that center in San Fernando Valley, did you?

A. No, we did not.

Q. What was the reason why you did not?

A. Because I followed the legal advice at that time and I agreed with them that we had taken over these centers very rapidly, and that we ought to at least see what we could do.

Q. Were you afraid that some consequence would develop in the event that you did take over and operate the center; was there anything that you were troubled about?

A. I was troubled that it could cause us un—unnecessary bad relationships with some of our customers is one of the reasons I was concerned, yes.

Q. That relationship with your customers, were you fearful that that relationship might not be as good if you took over this bigger piece- of the

[3503]

market; was that the nature of the fear?

A. Based on our taking them over so soon and in short order, yes, sir.

Q. Was there not also a fear that if you took over that large a percentage of the market that you would have an illegal monopoly in the market?

A. I have—I don't know—I have never been told what illegal monopoly is.

I have been told that 25 percent is not an illegal monopoly by our Legal Department.

Q. Well, was that what you were worried about, whether it was in fact a legal monopoly or not?

A. Was I?

Q. Yes.

A. No, I was more concerned with the relationships with our customers.

I am not a lawyer, sir. I don't understand all of that.

Q. Now, sir, in 1970, at the same time on page 1550 of the transcript I asked you, "And if you had too large a percentage of the market, was it fear that you would have an illegal monopoly in the market? Is that what you were worried about?

"Answer: Our Legal Department was, yes, sir, I guess. Yes, sir."

[3504]

Any reason to change that testimony now?

A. No, sir.

Q. Now, then your Legal Department was worried?

A. I guess, I don't know what their—

Q. You said, "yes."

A. I said I guess.

Q. No—I take it back. As to your Legal Department—I better read it again and straighten it out.

"Question: And if you had too large a percentage of the market, was it fear that you would have an

illegal monopoly in the market? Is that what you were worried about?

"Answer: Our Legal Department was, yes, sir, I guess. Yes, sir."

I'm sorry. Your legal Department you guess was worried about it, but as to yourself, you said, "Yes," you were worried about it; is that the meaning of that answer?

A. No, I think I explained it to you that I was concerned with our relationships with our customers, I had been told by our Legal Department that 25 percent of the market is not illegal, I have also known from my own business experience that 25 percent of any market is not control of any market.

[3505]

Q. Sir, do you know from your own legal experience whether or not the question of control of the market depends upon a number percentage at all?

A. I am not a lawyer, sir, I would not—

Q. Did your lawyers inform you that there was any particular number of percentage of the market which would determine whether or not your acquisition of a center or operation of a center was illegal?

A. May I have that question again?

(Record read.)

A. Not to my knowledge, no, sir.

Q. So far all you know it could be that 25 per cent might make it illegal or 50 per cent or 75 or no per cent at all; is that right?

You don't know, isn't that the answer?

The Court: Don't answer it.

Mr. McNeill: Your Honor, there are about three questions. I have no objection to the last one as to whether he knows, but the others—

The Court: Do you know, Mr. Rudo?

The Witness: From a legal point of view?

The Court: Based on your experience.

The Witness: Based on my—only what our legal—

The Court: Legal or otherwise.

[3506]

The Witness: My own business experience, there is no control of the market. Our legal department informed me that 25 per cent was not an illegal part of the market, they told me that 25 per cent of the market was not illegal.

What the other percentages are, I don't know, sir.

Q. Who told you that?

A. Our legal department.

Q. Nonetheless they advised you not to operate in San Fernando?

A. Yes, sir.

Q. And didn't you say just a few minutes ago that 25 per cent is your opinion of what you had in that market?

A. Yes.

Q. Sir, do you have any idea of the percentage of market control—I will withdraw that.

Mr. Rudo, do you know what percentage of the competitive market in the Paramus area is occupied by Brunswick?

My question is do you know?

A. No, sir.

Q. And in relation to the Pueblo, Colorado, bowling market, do you know what percentage is occupied by Belmont?

[3507]

A. No, sir, I don't.

Q. In relationship to the Fort Lauderdale area, do you know what percentage of the market is occupied by Brunswick in that competitive area?

A. No, sir.

The Court: How about Poughkeepsie when Brunswick operated Dutchess?

The Witness: No, sir.

Q. Did you say you didn't know as to Poughkeepsie?

A. I have no idea.

Q. Now, sir, did there come a time when Brunswick acquired a chain of bowling centers in Indiana?

A. Yes, sir.

Q. About when did that hapapen?

A. I'm sorry, sir?

Q. About when did that happen?

A. Early 1965.

Q. And do you know how many centers were involved?

A. Six.

Q. Did you have any clearance of that acquisition from your legal department?

A. I may have, I don't remember specifically now.

Q. You don't remember one way or the other?

[3508]

A. Not right now, no, sir.

Q. Now, do you remember what the nature of Mr. Lieblich's complaint was concerning the opening of the new center in Pueblo, Pueblo, Colorado?

A. Yes, sir. I think I testified to that on the—early in my testimony.

Q. What was the nature—

A. He felt there would be too many bowling centers, too many lanes, actually, in the broad area of Pueblo.

Q. And that the area—

A. And that he was not doing well.

Q. And that the area could not sustain profitably an additional center; is that what you're saying?

A. Yes, that was what he was saying, yes.

Q. Do you know whether or not the proprietor who opened the new center in Pueblo after Lieblich had given his opinion to Brunswick made a success of it?

A. Evidently he did not. We took it over, we repossessed it. We repossessed the equipment in it.

Q. And then operated Pueblo with the earnings or net profit and cash flow as was described a little while ago in your testimony?

A. Yes, sir.

Q. Now, do you know whether or not this history doesn't show that Mr. Lieblich's prophecy was correct;

[3509]

didn't Mr. Lieblich say this area couldn't support an additional center, and didn't the history of the owner who took Belmont and then Brunswick itself prove that Mr. Lieblich was right up until 1970?

A. In my opinion?

Q. Yes.

A. No, sir.

Q. What happened; why was Belmont such a failure for two organizations, the prior owner and Brunswick itself?

A. I don't consider it a complete failure from Brunswick's operation.

Q. Not any longer, not with the upswing in bowling, isn't that right, in 1970, 1971?

A. I found our experience in operating Belmont tied very close to the manager we had there, and when we had a bad manager there in those two or three years is where our difficulty occurred, and when we had good managers in the Belmont Pueblo—Bowl in Pueblo, we had a positive cash flow and/or a profit.

Q. Well, Lieblich was advising you, was he not, not to let another business man come in and open a center because the area couldn't profitably support it; isn't that what he was doing?

A. Yes—well, not completely, no, sir. He was—

[3510]

he had not done well and I think he was trying to protect his bowling center.

Q. Well, the nature of his advice was don't open another center; isn't that right?

A. Yes, sir.

Q. And the reason given, if I understand your testimony, was that the area couldn't profitably support another center; isn't that right?

A. No, sir.

Q. I thought you just said that.

A. That's not what I said, I don't think.

The Court: Didn't you testify yesterday that originally you were against opening Belmont, only after an evaluation was made that you were convinced that it could take another center?

The Witness: Yes, sir.

The Court: All right, Mr. Hoffmann.

Q. Was not the nature of Mr. Lieblich's complaint that the area could not profitably support the new center; is that what you're saying?

A. No, sir, not completely.

Q. You testified concerning this matter in 1970, did you not?

Do you remember testifying concerning this matter in 1970?

[3511]

A. I don't remember it, no, sir.

Q. Well, perhaps I can serve to refresh you.

Mr. McNeill: Excuse me.

Mr. Hoffmann: Page 1558 of the transcript, April 9, 1970:

Q. "Question: And was it not the nature of Mr. Lieblich's complaint that the area could not sustain profitably this new center in Pueblo, Colorado?

"Answer: Yes, sir.

"Question: Do you happen to know whether or not the proprietor who opened the new center in Pueblo after Mr. Lieblich advised Brunswick against one being opened was able to make a go of it?

"Answer: Yes, sir.

"Question: What happened to him?

"Answer: He failed as a business. We had to repossess the bowling establishment.

"Question: He failed as a business, isn't that so?

"Answer: That's right, sir.

"Question: So Mr. Lieblich's advice to Brunswick was not bad advice, was it, Mr. Rudo, in connection with Pueblo?

"Answer: No, sir.

"Question: And indeed, Brunswick's failure to follow it resulted in another businessman going under?"

[3512]

I will read that again.

"Question: And indeed, Brunswick's failure to follow it resulted in another businessman going under; isn't that what happened?

"Answer: Yes, sir."

Anything there you want to change?

A. No.

Q. Now, do you remember, Mr. Rudo, that yesterday in the course of my cross-examination I referred to an advertisement for a bowling center on the West Coast which charged $2—I'm sorry, $2.25 for a complete breakfast, three games and free shoes?

A. No, sir.

Mr. Hoffmann: Perhaps Miss Costello will be good enough to mark for identification a copy of the Pacific Bowler, page 24, dated April 20, 1973, and the only matter on the document that I am concerned with or that I am identifying is an advertisement for Brunswick's Rossmoor Bowl, Seal Beach, California.

(Exhibit P-75 marked for identification.)

Mr. Hoffmann: May the record show I have already shown this to Mr. McNeill? This is the advertisement which I represented to the Court I would bring into court today.

[3513]

The Court: Yes.

By Mr. Hoffmann:

Q. I show you this advertisement, Mr. Rudo. Is Rossmoor Bowl a Brunswick operated bowling center?

A. Yes, sir.

Q. Is the price listed there $2.25 for a complete breakfast, three games and shoes; is that a price which you approved?

A. Every Sunday at 9:00 a.m. to noon, it looks like a very good promotion to me.

Q. Good promotion?

A. I would think so, on Sunday morning when most bowling centers are empty, it looks like a good promotion.

Q. No reason for any disciplinary action against the manager of Rossmoor for this?

A. For that promotion, I don't—I know of no reason, no, sir.

Q. Now, sir, you said that since Brunswick has taken over that the prices only go up; isn't that right?

They don't go down?

A. That's right.

Q. Is it a matter of price, a complete breakfast—what is the usual price for a game, if you know?

A. In California?

[3514]

Q. In California.

A. I don't know in that particular bowling center.

Q. Do you have any idea of the range in which it might fall; would it be less than 50 cents?

A. No, I don't think it would.

Q. Would it be more likely 75 cents?

A. It would be probable—could be, yes, sir, could be in that area.

Q. If it were in the area of 75 cents and there were three games, that would be three times 75, would it not, or $2.25?

A. Yes.

Q. Do you know what shoes normally cost?

A. I would guess around a quarter.

Q. And there would be tax on them, wouldn't there, in normal prices, they don't give away shoes free, so it would be about two and a half?

The Court: You mean the rental of shoes?

Mr. Hoffmann: Rental of shoes, of course.

Q. And, sir, a complete breakfast in California, have you any idea what that is worth?

A. No.

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[3517]

Q. Mr. Rudo, you testified yesterday that Brunswick started construction on a new bowling center for the Omaha area, is that correct?

A. Yes, sir.

Q. Is that pursuant to any contract with an independent proprietor, or that it was being built for use by someone else?

A. We tried to sell it, but this one, as it is going now, is to be operated by BCO.

Q. That's the Brunswick bowling operating division, is that right?

A. I'm sorry, I didn't hear you.

Q. By Brunswick's bowling operating division?

A. By BCO, which is our operating division; yes, sir.

Q. Now, sir, how would you describe this center in terms of what has been planned for it, is it going to have modern features?

A. Yes, sir.

Q. What will those features include?

A. I don't know what you mean.

Q. Well, is it going to have the latest in automatic pinsetting equipment?

A. The latest in automatic pinsetting equipment is of vintage 1962.

[3518]

Q. You are going to put in some pinsetters that you repossessed?

A. Probably.

Q. Well, do you know?

A. I don't remember right now, sitting here; no, sir. But all the BCO's, that I know of, that we built, we put in used equipment, yes, sir, used pinsetters.

Q. The pinsetter isn't seen by the public itself, except from a masking in front, is it?

A. That is correct, sir.

Q. So far as the public is concerned, whether it is '62 or '72 would make no difference, as far as the bowler is concerned?

A. That's right.

Q. The lanes, however, will be new, will they not?

A. Yes, sir.

Q. The statement is made, " 'The bowling center, the first Brunswick owned in Nebraska, will be the most modern in the world when it opens because it will feature computerized automatic scoring,' Chauncey says," is that correct?

A. If he says it, I would guess it will be; yes, sir.

Q. Well, sir, could you describe computerized

[3519]

automatic scoring; is that a new development?

A. Yes, sir; there are three of them on the market, one we manufacture, one that RCA——

Q. How about describing the one you manufacture?

A. Well, to my knowledge, they are all computerized. RCA is manufacturing——

Q. Would you describe the one that you manufacture?

A. Well, it scores each game of bowling for every bowler. The bowler does not have to write a score down.

Q. The description here is, "'The system employs automatic pinsetters with sensors that relay information to computer units for score keeping. All the bowler does is identify himself and roll the ball,' Chauncey says."

Can you elaborate on that?

A. They, all three of them, do the same thing; yes, sir.

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[3554]

BERNARD RUDO, called as a witness on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Seeley:

Q. Mr. Rudo, will you state your name and tell your address, please, where you live?

A. My name is Bernard Joseph Rudo. My address is 1714 McCraren Road, Highland Park, Illinois.

Q. By whom are you employed presently, Mr. Rudo?

[3555]

A. Brunswick Corporation.

Q. In what capacity?

A. Vice president of operations of BCO.

Q. Have you been associated with the bowling business for a considerable time?

A. Yes, sir, since 1956.

Q. Would you please trace your association with the bowling business since that time, and state who you worked for and in what capacities, and in general what your duties were?

A. In 1956 I was hired by Fair Lanes, Inc., in Baltimore, Maryland.

I commenced work in the summer of that year as an assistant manager in a pin boy establishment, prior to the automatic pinsetters, and then later on I managed a bowling center in Baltimore for Fair Lanes, and eventually became a district supervisor of four bowling centers for Fair Lanes in Baltimore.

I also handled some of their lease negotiations and site work.

I handled some of their merchandising up until 1959.

In 1959 I was employed by American International Bowling Corporation, which at that time they were based on Beaver Street in New York.

[3556]

My position upon hiring was vice president and general manager of American International Bowling Corporation.

My prime responsibilities for them at that time was to select managers, assist in site location, set up the houses as we opened the bowling centers, help promote the bowling centers, set policy as it pertained to the operation of the bowling centers, develop any new programs and assist in the total management of the operating facilities as it related to bowling, food, beverage and vending at that time.

I joined American International in June of 1959, and held the position of vice president and general manager until June of 1963.

In the meantime American International moved its executive offices from downtown New York to West Englewood, New Jersey, in Bergen County.

I resided during this period of time from June 1959 in Woodcliff Lake in Bergen County.

In 1963 I was appointed by the Board of Directors of the American International to be the president of this company. We operated at that time better than 30 bowling centers stretching from Arkansas in the West, South to Daytona, Florida, and North to Haverhill, Massachusetts.

[3557]

From 1963, upon my appointment as president, until late Spring of 1964, I carried on this function and reported to the Board.

In 1964, upon the filing of bankruptcy proceedings by American International, here in this building, I worked for the Receiver, Mr. Sanford Silverman, until the liquidation of AIBC in March of 1965.

In March of 1965, upon the purchase of the corporations that then existed by Brunswick, I was employed by the Brunswick Corporation as the Eastern Regional Manager for Brunswick. My territory and responsibilities were as follows:

We covered from the northern part of Canada through the Ohio market and south to Florida. I had the responsibility of operating not only the American International Bowling centers that were acquired by Brunswick, but the centers that were repossessed by the corporation during the succeeding years.

In January of 1967, I was appointed to my present position. And I moved from New Jersey to Chicago and reside at my present residence since January 1967.

My responsibility in 1967, as vice-president of operations, was to assist management in policy, but mainly to operate the bowling centers, according to policy, that were in our portfolio at that time,

[3558]

and any succeeding centers that became part of Brunswick. I hold the same position today, sir.

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[3575]

Q. Mr. Rudo, what is the extent of your familiarity with Bergen County, New Jersey?

A. I resided in Bergen County from 1959 to 1967. And I directed the operations of the former AIBC centers as well as the BCO centers. I think I have a very good understanding of Bergen County.

Q. Have you made any survey of present and former bowling centers in Bergen County?

A. Yes, I have.

Q. When did you do that?

A. I did that during the second week and part of the third week of April.

Q. And in what manner did you conduct this survey?

A. I used the Garden State Bowl-O-Mat as the center of the wheel, and I drove from Garden State Bowl-O-Mat out to different centers on this map, and back to check my distances, as well as visit the open centers in Bergen County.

Q. Did you have with you any lists of centers in Bergen County while you were doing this?

A. Yes, sir.

[3576]

Q. What lists did you have?

A. I had the lists supplied to me by the company. And I also had a list that we had gathered from the records of the Bergen County Men's and Women's Bowling Association.

Q. And did I understand you to say that by driving in your car, beginning at the location of Garden State Bowl-O-Mat, you measured on the speedometer of the car the distance from there to each of the centers you visited?

A. Yes, sir.

Q. Now, what other facts, besides the existence of the open centers and the distance by car from the Bowl-O-Mat center, did you ascertain during this survey?

A. The centers that were open I visited, looked at the equipment, verified the number of lanes, verified the address, determined what type of equipment was being used, what type of pro shop items, if I could, were being sold, whether it had a snack bar, bar facilities, and tried to estimate the age of the equipment, from my knowledge.

I also visited the areas where the closed centers were listed and, where possible, I tried to determine how long they had been closed; if I could, I sought out

[3577]

someone in the existing business that replaced the old bowling center to find out how long they were there.

In one case, for example, the place had burned down and there was an apartment house there. I tried to determine what businesses were presently in the closed centers, if possible, if the buildings were still standing.

Mr. Seeley: I am going to have marked as Exhibit D-50 for identification a map mounted on cardboard which is entitled "Hagstrom's Street and Road Map of Bergen County, New Jersey, including cities of Paterson and Passaic." And for the use of the witness, and counsel, we have photographic copies of that map.

(Exhibit D-50 marked for identification.)

Q. Showing you a copy of Exhibit D-50 for identification, do you observe that this map has on it circles with numbers in them and squares with numbers in them?

A. Yes, sir.

Q. And do you know what the significance of the squares versus the circles is?

A. The squares denote the closed centers and the circles denote the open centers.

[3578]

Q. Do you also observe that on the margin of the map there is a legend listing bowling centers by name and giving them numbers which correspond to numbers on the circles and squares?

A. Yes.

Q. And do you notice that opposite the names of some of the centers there named there are asterisks?

A. Yes.

Q. And do you notice at the bottom of the legend there is an asterisk followed by the word, "closed"?

A. Yes.

Q. Did you have a copy of this map with you when you made the survey you have described?

A. Yes, sir.

Q. And did you personally visit in the course of that survey every location marked on this map by a round circle indicating an open bowling center?

A. Yes.

Q. And did you visit the former locations as best you could determine them, of the closed centers marked by squares?

A. Yes.

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[3580]

Q. Mr. Rudo, I show you Exhibit P-14, which is in evidence, plaintiffs exhibit, and it is entitled, "Paramus Market."

Do you see the name of Interstate on that?

A. Yes.

Q. There is a column headed, "Distance from Bowl-O-Mat," do you see that?

A. Yes.

Q. What does it say opposite Interstate?

A. Seven and a half miles.

Q. Did you drive in your car from Paramus

[3581]

Bowl-O-Mat to Interstate Lanes?

A. Yes, sir.

Q. Did you drive it once, or more than once?

A. I drove it as recently as yesterday. I have driven it in the last two weeks maybe about half a dozen times.

Q. How far did you find that distance to be on the speedometer of the car you drove?

A. 12.1 miles.

Q. 12. one-tenth miles even?

A. Yes.

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[3585]

Q. Mr. Rudo, would you please step to the map and point to the location of Paramus Bowl-O-Mat?

The Court: Please use the pointer, Mr. Rudo.

Can the jury see?

Do we have the extra maps? Why don't we have the jury follow that.

Mr. Seeley: We don't have that many.

The Court: Maybe one to each two jurors.

A Juror: We can see that, your Honor.

The Court: Sorry, just trying to be accommodating.

Q. Will you please point to the location of Paramus Bowl-O-Mat, sir, and state what number sticker it is?

A. It is sticker number 1, 36 Brunswick lanes.

Q. Now, will you please point to Ten Pin on the Mall and state what number that is?

[3586]

A. That is number 3, 36 Brunswick lanes.

The Court: Tell the jury what community it is in.

The Witness: It is in the community of Paramus bordering Maywood.

Q. And the location of Lodi Lanes, please?

The Court: In Lodi, New Jersey?

A. It is in Lodi, New Jersey, it is number 52, 40 Brunswick lanes.

The Court: I suggest you also answer what county, if you know.

The Witness: Bergen County.

The Court: All right.

Q. Now, Interstate Lanes, please.

A. Interstate Lanes is number 17, 40 Brunswick lanes, in Ramsey, New Jersey.

The Court: What county?

The Witness: It is in Bergen County.

Q. Mr. Rudo, you will observe on the legend of that map that the scale of the map is shown in feet rather than as often is the case in miles or parts of a mile; is that right?

A. Yes, sir.

[3587]

Q. Now, did you work out from that how many inches on a ruler represent five miles on the scale?

A. Yes, sir.

Q. How many inches was it?

A. Eleven and a half.

Q. And do you observe on the map, sir, that there is—has been drawn in heavy pencil a circle; did you observe that?

A. Yes.

Q. And do you know what is the center of that circle?

A. Yes, sir.

Q. What is it?

A. It is location number one, Garden State Bowl-O-Mat.

Q. Did you check with the ruler the distance from number one to the perimeter of the circle?

A. Yes.

Q. How far is it?

A. It is five miles or 11 and a half inches.

Q. You may resume the chair, sir.

Have you counted the number of round stickers which are within that five-mile circle?

A. Yes, sir.

Q. How many did you count?

[3588]

A. 22.

Q. How many of those circles represent centers operated by BCO?

A. Three.

Q. What percentage are three centers of 22 centers?

A. My calculation is 13 percent.

Q. Have you counted the number of lanes in the centers marked by those 22 round stickers?

A. Yes.

Q. How many did you count?

A. 580.

Q. Have you counted the number of lanes in the three BCOD centers which are in that circle?

A. Yes.

Q. How many were there?

A. 108.

Q. Have you calculated what percentage 108 lanes are of a total of 580 lanes?

A. Yes.

Q. What percentage?

A. 18 percent.

Q. Now, have you also counted the number of round stickers on the entire map?

A. Yes, sir.

[3589]

Q. How many did you count?

A. 36.

Q. How many of those are BCO operated centers?

A. Four.

Q. Does that include Interstate in addition to those within the five-mile circle?

A. Yes.

Q. And have you calculated what percentage four centers are of 36 centers?

A. Yes.

Q. What percentage is it?

A. 11 percent.

Q. Have you counted the number of lanes in the centers marked by those 36 round stickers?

A. Yes.

Q. How many did you count?

A. 943 lanes.

Q. Have you counted the number of lanes in the four BCO operated centers?

A. Yes.

Q. How many?

A. 148 lanes.

Q. What percentage are 148 lanes of 943 lanes?

A. 15 percent.

Q. Now, have you also counted the number of lanes

[3590]

indicated on the map as having been located at one time at the points marked by the square stickers which are within the five mile circle?

A. Yes.

Q. How many lanes did you count?

A. 182.

Q. Now, eliminating all of those centers indicated as having fewer than 20 lanes, how many lanes did—in such of those centers as had 20 or more lanes?

A. There are four centers.

Q. How many lanes?

A. 90.

Q. And have you also for the entire map counted the number of lanes indicated by the centers represented by square stickers?

A. Yes.

Q. How many did you count?

A. The total—may I ask you——

Q. Well, you have given us inside of the circle. How many outside of the circle?

A. I have 118 lanes outside of the circle.

Q. Again, eliminating those centers which are indicated as having had less than 20 lanes, how many lanes do you have left in those closed centers?

[3591]

A. 68 lanes.

Q. Mr. Rudo, when did you take over the operation of the former AIBC centers for Brunswick Corporation?

A. In—really March 27, I believe, it was the day after —the bankruptcy hearing, 1965.

Q. And did the operation of those centers for Brunswick begin immediately following that sale?

A. Yes.

The Court: How many? I don't recall.

Mr. Seeley: In this area or all together?

The Court: AIBC.

The Witness: In total?

The Court: In the country.

The Witness: At the bankruptcy sale, I believe 26 centers were sold.

Q. Now, at that time, namely, at the time you took over the operation of those centers for Brunswick, was

there a BCOD or Bowling Center Operations Division of Brunswick?

A. To my best recollection, the BCOD Division was formed in late 1964, and continued on, and we joined the BCO Division in March of 1965.

Q. At the time the AIBC centers were taken over by BCOD in March of 1965, did you or did BCOD

[3592]

change any of the operating policies of those centers?

A. No, we did not because we were in the midst of a league season and our leagues ended in late Spring, it could be anywhere from the end of April to the mid part of May, and we decided to continue the policies that were in effect at the time.

The Court: Excuse me. Before BCOD took them over, who operated them, Brunswick?

The Witness: Who operated——

The Court: After the bankruptcy sale, who took over those centers?

The Witness: BCOD.

The Court: BCOD directly.

The Witness: Yes.

The Court: I thought they were in Brunswick's hands for a while and then transferred to the Division.

Mr. Seeley: No. The Division was created before the bankruptcy sale, it was already in existence.

Q. In your answer as to not changing the policies, do you include in that bowling prices and the terms of league contracts?

A. Yes.

Q. Who was your superior at that time when

[3593]

you became the Eastern Regional Manager of BCOD?

A. My brother, Milton Rudo.

Q. At that time or within a few days after you became Eastern Regional Manager, did Milton Rudo say anything to you as to what he wanted BCOD's pricing policies to be?

A. The direction that I received in the Spring of 1965 was to maintain the prices that we had charged and he did not want any price cutting.

Q. At the time when or after BCOD took over the operation of any AIBC center were the prices charged for bowling ever lowered to less than AIBC had been charging immediately prior to the takeover?

A. No, sir.

Q. Now, do you need to refer to any records to be sure of that?

A. No.

Q. Why are you sure of it?

A. I'd like to just describe the AIBC organization if I may briefly.

Q. If it is necessary to answer the question, do so.

A. Eight to ten bowling centers that we had in a geographic area, we had a supervisor who was known in those days as a regional manager.

[3594]

The gentleman had worked for me since 1959, I trusted them, I selected them. They performed well for me, and I knew that our policies as promulgated to them would be carried out, and I had trust and confidence that they would follow the directives that came from my office,

they worked for me and they joined the company, the Brunswick Corporation, upon the takeover.

Q. What directions did come from you to those district managers?

A. I don't understand your question.

Q. Did you give them any instructions with respect to what the prices and league terms were to be in the former AIBC houses?

A. Yes, I told them to maintain the terms and conditions that we had in effect, and I also had knowledge of the fact that we were going to have a general BCOD meeting in late Spring to effect policy and I'd report back to them at that time whether any changes would come about.

Q. As the regional manager, Eastern Regional Manager for BCOD, what, if any, means did you have of knowing whether or not your instructions about pricing were being followed up in those centers?

A. We had various ways to audit the performance of any bowling center as well as any district operation.

[3595]

They took the form of an outside shopping service that made surprise shopping visits to centers. We had a travelling internal auditing group that made surprise visits to the centers.

We had a corporate auditing group that also visited the centers.

We had our outside auditors also making surprise visits to the centers.

In those days many of us in the higher management groups visited the centers by surprise or by announced visits.

We had daily cash reports that were audited in the Accounting Department.

We posted our open play prices for all of our customers to witness and to see what we were charging.

[3596]

We had league agreements that listed the price, the week, the terms that we agreed upon with the leagues. In general, we felt that we had a complete control system at that time.

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Q. Mr. Rudo, in addition to the centers—former AIBC centers purchased at the bankruptcy sale, to which you testified, did BCOD in 1965 take over the operation of other bowling centers?

A. Yes, sir.

Q. Were those the centers that were repossessed—from which the equipment had been repossessed by Brunswick?

A. Yes, sir.

Q. With respect to those centers, were your instructions to your district managers, about pricing policy, the same as they were with respect to the

[3597]

former AIBC centers?

A. Yes, sir. If we had a league season to finish, if it was in spring, once the league season was finished, then we, in many cases, changed the pricing, or the general promotion scheme in these centers, as the April and May period ended, and we got into the summer season.

Q. Did you encounter any resistance on the part of customers to the raising of the prices?

A. You bet. Yes, sir.

Q. And what did you do to deal with that resistance?

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[3599]

A. I told my supervisors to take a firm position and maintain a firm stance.

Q. Did you have any meetings or confrontations with league officers in that connection?

A. Did I personally?

Q. No, did the organization which you supervised?

[3600]

A. Yes, sir.

Q. What was the nature and purpose of those meetings?

A. We instituted a policy of conducting league officer meetings twice a year, at which time we invited the league officers to come into our place of business, leagues that bowl in our center, and listen to our program and listen to our pricing policy.

Q. Now, Mr. Rudo, did AIBC, prior to March of 1965, have a summer bowling plan for youngsters which consisted of a package of three games of bowling, a hot dog and a Coca-Cola?

A. Yes, sir.

[3601]

Q. Will you please describe in a little more detail exactly what that program encompassed?

A. That program encompassed the promotion in our mind of junior bowling in off hours, in the late spring and all summer. It involved—the question asked—three games of bowling, shoes, a Coke and a hot dog, the thought being to build new business, get new juniors in.

We were competing, in our minds, with the outdoor activities, the camps, the swimming, the Little Leagues baseball. And it was our feeling that we could generate some new interest in bowling by youngsters.

Q. After you went to BCOD as Eastern Regional Manager, did you install that program in all of the BCOD houses under your supervision?

A. Yes, sir.

Q. Did that program have a name?

A. I believe in 1965 we continued with the name of Junior Friendship.

Q. What were the times of the week, or day, during the spring and summer when this program was available to young people?

A. This program was conducted after our junior league season, which ended in late March. So we started on Saturdays in April and May, and then we went on Mondays,

[3602]

and Fridays, in June, and July, and August, during the daytime hours.

Q. Only during daytime hours?

A. Yes, sir.

Q. During the late spring, after the end of the league season, and during the summer, what amount of activity prevails in bowling centers you are familiar with as compared with the activity during the fall and winter season?

A. It has been my experience that generally you do about one-sixth, or somewhere between 12 and 15 per cent of your total business in the summertime.

Q. You mentioned in your testimony that you said to your district managers that later there would be a formulation of policies by BCOD. Did that occur?

A. Yes, sir.

Q. When did that occur?

A. In late spring—I believe it was May of 1965—a meeting was called for all the supervisors to appear in Chicago. And at that meeting the AIBC group was asked

to present its promotion program to the total BCO supervisory group. Some of the programs in their existing form were adopted, some were changed and some, I believe, were dropped.

Also, at that meeting we started our systems and

[3603]

procedures in a formalized form and developed a systems and procedure manual to use in our operation.

Q. Does BCOD have a promotional consideration which is called the Achievement Award Program?

A. Yes, sir.

Q. Would you describe that, please?

A. The Achievement Award Program that we use is based mainly on the achievements of our internal bowling population, namely, the league bowlers that bowl in our centers. It is to reward these bowlers in the form of patches, trophies, it can take the form of an ashtray, by accomplishment. It could be on a 200-plus game for women, it could be a 250 game for men. And it is awarded to bowlers that bowl in our leagues, in our bowling centers, during the course of both the winter season and the summer season.

Q. At the meeting you have mentioned in late spring of 1965, was any policy evolved for BCOD about the number of weeks for which a league bowling program would be contracted for?

A. Yes, sir.

Q. What was it?

A. We established that we would attempt 35 weeks at night, starting with the fall season, which generally begins from the Labor Day period and ends—whatever

[3604]

the 35-week period would be, depending upon the holidays, and a 31-week league season for our daytime bowlers.

Q. Were there any places in the country where that program was difficult to implement?

A. Yes, sir.

Q. Where?

A. We had found in our repossession of bowling centers in Los Angeles, Greater Los Angeles, Orange County, that the tradition, the precedent in that area had been 33 weeks at night, by the leagues.

We also found in Buffalo, New York, in some cases the same thing prevailed.

In some of the communities in Indiana, 33 weeks was the traditional number of weeks required.

We found this to be the case in Ohio in some cases.

That's my best recollection.

Q. Did you sometimes or always make exceptions to your 35-week policy when you found the local custom was otherwise?

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[3605]

A. We have made exceptions; yes, sir.

Q. Have you done anything which has resulted in reducing the number of those exceptions over the years from 1965 to the present time?

A. Yes, sir.

Q. Has the number of exceptions been substantially reduced?

A. Yes, sir.

Q. At the meeting in the late spring of 1965 was any basic BCOD policy devised with respect to the so-called promotional items or inducements which BCOD houses would offer to league bowlers?

Mr. Hoffmann: I object to the question on the ground that there has been no foundation for what is meant by basic BCOD policy.

The Court: I will sustain it as to form. Rephrase it.

Mr. Seeley: Withdraw the question.

Q. Was any policy evolved at that meeting with respect to promotional items, or so-called inducements to be offered throughout the country in BCOD centers?

A. Yes, sir.

[3606]

Q. And what was the policy which was evolved?

A. The policy was that a nighttime league that bowled 35 weeks would get five trophies, or four, depending upon the number of people on a team; they would be eligible for our patch and achievement award program, if they accomplished the scores; they would be eligible for the Bowl-Your-Way-to-Europe Tournament; they would be awarded ten free games for our summer activity.

And that's the total program that you refer to.

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[3648]

Q. When was it that the Bowl-Your-Way-To-Europe tournament took shape in the BCOD organization?

A. At the meeting in Chicago.

Q. And will you describe what that tournament consists of; how is it operated?

The Court: Are we speaking now about the Spring of 1965 or thereabouts?

[3649]

Mr. Seeley: And thereafter, yes.

A. This Bowl-Your-Way-To-Europe tournament is still in effect today. This is our eighth year of conduction.

This tournament is based on pins over average, and every month in a BCO center all bowlers that bowl in 35 week leagues at night and bowl in 31 week leagues in the daytime are eligible, each month, and we have two classes, 150 average and over for men as well as 149 and under, two classes in the men, two in the women, there is 125 and over and 125 and under.

These we select—these people are selected each month. There would be four each month.

They ultimately bowl at the end of 12 months in a roll-off in a BCO center, and the man and the woman that have the most pins over average are invited to our Washington tournament and they get a trip to Washington, D. C. to bowl against all of the other bowlers in the other BCO houses that we have operating as well as the management houses that we manage for others.

We also bring in our Canadians to this tournament.

We also invite our small bowl winners. We conduct an independent tournament which we call Bowl-Your-

[3650]

Way-To-Bermuda for our small bowl, candlepin, five pin, tenpin and duckpin. And we invite them in as guests.

So we have approximately 300 to whatever, 400, depending on the number of houses participating, bowlers.

Generally, it's been about 350 to 360 bowlers that participate in this roll-off.

The male winner with the most pins over average and the female winner with the most pins over average are awarded a free trip to Europe; that's why we call it, "Bowl-Your-Way-To-Europe."

And they can take their spouse to Europe with them.

They bowl in an IBCO center in Europe.

Q. Is the cost of this Bowl-Your-Way-To-Europe program charged to the individual BCOD centers?

A. Yes.

Q. Does BCOD have a budget for its promotion and advertising?

A. Yes.

Q. What is that budget?

A. Three percent of gross receipts.

Q. Does this cost of Bowl-Your-Way-To-Europe have to become part of that three percent?

[3651]

A. Yes.

Q. Have you made a calculation as to the approximate cost per line of bowling of the Bowl-Your-Way-To-Europe program?

A. Yes, sir.

Q. How did you make that calculation?

A. The cost of Bowl-Your-Way-To-Europe is estimated at—

Q. No, just—

A. How did we make it?

Q. How did you make the calculation?

A. I divided the total lines bowled in 1972 into the number of lanes that we had in the domestic operation.

Q. And you took into account a cost, did you, of the—overall cost of the program?

A. Check me on that. I took the total number of lines into the cost, I'm sorry, and the cost was—I used the figure of $150,000.

Q. And having made that calculation, what figure did you come out with as the cost per line?

A. Three-tenths of one percent.

Q. Can you state approximately what it comes to per bowling lane of BCOD's lanes?

A. Approximately 24 to $25 a lane.

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[3652]

Q. Mr. Rudo, do BCOD houses as a matter of regular league policy give to league bowlers coupons entitling them to a certain amount of free bowling?

A. Yes, sir. Our contract provides that ten free games of bowling to bowlers that sign up and bowl our 35-week schedule at night, 31 weeks in the daytime.

[3653]

Q. Is there a cost to BCOD of giving those free bowling coupons to league bowlers?

A. I don't apply a cost, sir.

Q. Well, is there?

Does it actually cost BCOD anything to give away those coupons?

A. The bowling centers are open, we provide those coupons for bowling in a period of time of late spring until almost the end of July, and we provide one game per bowler per time bowled.

We checked this return, oh, it must have been two or three years ago, and we were getting for every free game two paid games.

We were getting a total of about 18 per cent redemption of the total of tickets that we passed out.

Q. Now, it has been testified here that the first thing BCOD does when it takes over the operation of a center is to modernize the equipment; is that right?

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[3654]

Q. Is it a fact, Mr. Rudo, that BCOD makes a practice of modernizing the centers which it takes over for operation at or very shortly after the time it takes them?

A. No.

Q. What is the policy of BCOD with respect to modernization of the equipment in the centers which it operates?

A. I'd like to just explain this for a minute, if I may.

In many of the repossessions, our leases were for—of short-term nature. When I say "short-term

[3655]

nature," they could have been two-year leases, three-year leases with a number of options.

So the first thing we considered was our initial term in the bowling center as far as a tenant.

We also considered the history of its performance if we were able to secure it. As to what we did as far as expenditures, we—if we operated a period of time we developed our own history which we could use.

We had the market survey made by our evaluation group which told us of the potential of this location in the future, and there were some forecasts made—made by the evaluation group upon takeover.

We also determined if we could get a price increase.

We determined the—we looked at the physical facilities to see whether we had to repair or replace the air conditioning, parking lots, the roof, many of these buildings were 10 and 12 and 14 years old, they were misused, abused, so in some cases we were forced to do it whether we wanted to or we didn't.

What do I mean? We were forced to coat a parking lot. We were forced to repair a roof in order to protect the chattels that were in the center, the lanes, any number of situations prevailed concerning the demands on us to put these facilities into shape.

[3656]

Now, when you talk about modernization—

Q. Would you please direct your answer specifically to the modernization of the bowling equipment?

A. In the case of bowling equipment, we are governed by the financial group of our company, the comptroller's office and the treasury department, as far as our capital expenditures.

We, to my best knowledge, in every year of BCO operation had a certain budget set aside in capital expenditures.

Before we could expend any money in any way, shape or form, we had to submit a project requisition. Depending upon the level of the expenditure, different approvals were gathered, and if we were going to improve bowling equipment, depending upon the nature of improvement to bowling equipment, depending upon where the approval was granted, in some cases the division president could grant the approval provided it was within budget, we weren't exceeding our budget, in some cases it had to go to the president of the company, in some cases it might have worked its way to the Board of Directors.

Q. Just a minute.

At that time, sir, at what level was approval

[3657]

necessary to put A-2's in equipment?

A. We needed the approval of the corporate office.

Q. Are there A-2's in Ten Pin on the Mall?

A. No, sir.

Q. Are there A-2's in Lodi Lanes?

A. Yes.

Q. Did BCOD put them there?

A. No.

Q. Who did?

A. They were there when we took it over in 1970. I couldn't tell you who put them in.

Q. Are there A-2's in Fair Lawn?
A. Yes.
Q. About when were they installed?
A. They were installed in 1966.
Q. Are there A-2's in Interstate Lanes?
A. No, sir.
Q. Are there fast ball return devices other than A-2, Brunswick A-2's?
A. Manufactured by Brunswick?
Q. Anybody.
A. Well, we have—
Q. Just yes or no.
A. Yes.
Q. Does Brunswick manufacture any other than

[3658]

the A-2?
A. Yes.
Q. What is the name of that?
A. What is commonly known as the Jet Backs.
Q. Does it perform the same way as an A-2?
Tell us about what it does?
A. Please bear with me, I'm not an engineer, sir, but the A-2 in concept to my understanding speeds the machine up.
The Jet Back lifts the curtain as soon as the ball makes its impact and boosts the ball back through the ball return to the front end. That combination is also with the A-2, and the A-2 machine is speeded up.
The Jet Back is a modification, it just entails the speeding—speedy return of the ball, not the machine.
Q. Have Jet Backs been installed in any BCOD centers?
A. Yes, sir.
Q. Have they been installed in Interstate?

A. Yes, sir.
Q. When, to the best of your recollection?
A. To the best of my recollection, in 1971.
Q. Has there been any increase in the number of fast ball returns, either A-2's or Jet Backs, which

[3659]

BCOD has installed over the years, over the period beginning in 1965?
A. We have installed a considerable number of Jet Backs during the last three years, including 1973.
Q. Is there a reason why you have done that in the past two or three years?
A. Yes. Our performance has improved considerably.
Q. What do you mean by "performance"?
A. Or profit.
Q. Has there been any change in the lineage experience of the BCOD centers?
A. There has.
Q. Has it increased or decreased?
A. Increased every year on the average.
Q. Now, has BCOD increased bowling prices in any of the centers which it operates?
A. Yes.
Q. Has it increased prices at Ten Pin on the Mall over those which prevailed when it assumed the operation of that center?
A. I believe it has.
Q. Do you know?
A. Yes, sir.
Q. Now, in 1968 did BCOD operate Ten Pin on the Mall under a management agreement?

[3660]

A. Yes, sir. It commenced in September of 1968.

Q. And then in—September 1969 did it repossess the equipment there?

A. Yes.

Q. And then it began to operate it—

A. As BCO.

Q. As a BCOD center?

A. Yes.

Q. And under the terms of BCOD's management contracts who has control over the bowling prices charged in a managed center?

A. We—the owner has control.

Q. Do you know whether at any time during the period that BCOD managed Ten Pin on the Mall from September 1968 to September 1969, the owner of that center reduced the bowling prices?

A. Not to my best recollection.

Q. Do you have in your mind any figures as to what were the average prices—what was the average price per line in BCOD houses in 1965 and what it was in 1972?

A. Yes, sir.

Q. What are those figures?

A. The average price in BCO houses in 1965 was 49.9 cents.

[3661]

The average price in 1972 was 59.5 cents.

Q. Does that include daytime prices and junior prices as well as adults?

A. Yes, it is a total mix.

Q. Has there been any price increase in the junior friendship program, three games, a Coke and a hot dog?

A. Yes.

Q. What does BCOD now charge for that?

A. It varies on the geographic area, the metro New York area is $1.75.

Q. Is BCOD contemplating any increases in its bowling prices in the near future?

Mr. Hoffmann: I object to the question. Totally irrelevant and unrelated to the issues in this case.

The Court: Why, Mr. Seeley, assuming they are, what is the relevancy of it?

Mr. Seeley: Simply, as I understand the charge here, is that we undercut the independent proprietors on prices.

I think it goes to our intent.

The Court: All right, I will permit it.

Answer it.

A. Yes.

Q. Why has it not made those increases sooner?

[3662]

A. We are waiting on a decision from our corporate management to allow us to institute the prices. We are part of an organization that's controlled by the Wage and Price Board, and our president has taken the position since Phase II was effected that this corporation due to its increase in profits would not raise price in any way, shape or form, and he is, as promulgated to us, complying with the spirit and the intent of the price rule.

Q. In the meanwhile has BCOD actually prepared schedules of price increases which it would like to make?

A. Yes, sir.

• • •

[3664]

Q. Mr. Rudo, the Court asked a question about the cost to BCOD of the Bowl-Your-Way-To-Europe program on a per line of bowling basis; have you made a calculation of that?

A. Yes.

Q. How did you make the calculation?

A. I divided 50,000,000 lines into $150,000 and I got three-tenths of a cent a game.

Q. Thank you.

Did your brother, Milton, have anything to do with your employment by American International Bowling Corporation?

A. No, sir.

Q. Did he have anything to do with your subsequently becoming the president of that corporation?

A. No, sir.

Q. When you were employed by Brunswick, to work for BCOD, who offered you the job?

A. Mr. Bob Searson.

Q. Was he a Brunswick official?

A. Yes, sir.

Q. What was his position?

[3665]

A. He was assistant to the president of the corporation.

Q. And in what connection had you gotten to know him, or had he gotten to know you?

A. On all matters that—during my term as president of AIBC—relative to the purchasing of Brunswick capital equipment, the renegotiation, if possible, of our debt outstanding, I was informed by Brunswick to make my proposals through Mr. Searson.

Q. Prior to the time when you accepted Mr. Searson's offer of a position with BCOD, did you have any communication whatever about it with your brother, Milton?

A. No, sir.

• • •

[3689]

CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Let's come back to that. When was the bankruptcy sale for the AIBC centers?

A. March 26.

Q. 1965?

A. 1965.

Q. What was your job on March 25, 1965?

A. I worked for the trustee in bankruptcy.

Q. Weren't you also president—

Mr. Seeley: Let him finish his answer.

Mr. Hoffmann: He answered. He said, "I worked for the trustee in bankruptcy."

Mr. Seeley: And then he started—

[3690]

The Court: Do you want to add something to that, Mr. Rudo?

The Witness: I used the title of president, AIBC, sir.

Q. You were president of AIBC, is that right?

A. That is correct.

Q. And when did you become president of AIBC?

A. In June of 1963.

Q. And you were, from June of 1963 until March 25, 1965, is that your testimony, president of AIBC?

A. I believe it was March 26 at the bankruptcy sale, sir.

Q. At the time of the bankruptcy sale, you were president of AIBC?

A. Yes, sir.

Q. What was your job on March 27, 1965, the next day?

A. I was employed by Brunswick.

Q. The very next day you were in Brunswick's employ, isn't that right?

A. I was employed that night.

Q. That very night you got a job with Brunswick. What was that job?

A. I wasn't told specifically what the job was the

[3691]

night of March 26. I approached Mr. Searson after the bankruptcy proceedings—I believe I have testified to this extent—I asked him if they were going to employ me or offer me a job.

He said, "yes, you are on the payroll. Someone will be in touch with you in the next few days."

Q. As of now, is that what he said; you were on the payroll as of now?

A. That was the night of March 26.

Q. Now, sir, on the night of March 26, had you had any prior contact with the Brunswick organization concerning the matter of the AIBC bankruptcy?

A. I don't understand your question.

Q. Well, the AIBC bankruptcy didn't happen all at once, it didn't happen in the course of a single day, there were things that went on, weren't there?

A. Oh, I had a relationship with Brunswick through the receiver in purchasing maintenance supplies, pins, whatever we needed to operate.

Q. How about through your older brother?

A. No, sir.

Q. You never spoke to him during the period when you were president of AIBC?

A. I spoke to him.

Q. More than once?

[3692]

A. Yes.

Q. Did you have anything to say to your older brother concerning the financial condition of AIBC?

A. No, sir.

Q. When you were at AIBC as president, were there any Brunswick officials who had anything to do with AIBC in terms of occupying officerships or other positions of trust?

A. There was a trust agreement of which an official of Brunswick was one of three trustees.

Q. Who was that official?

A. In the early trust agreement, I believe it was an attorney by the name of Ken Griffin.

Q. What was his relationship to Brunswick?

A. He was an employee.

Q. Do you know what his job was at Brunswick?

A. He was a lawyer.

Q. Was he working as a lawyer for Brunswick?

A. I believe so.

Q. And he became one of the trustees of AIBC prior to the bankruptcy?

A. It was a trust agreement that had three people administering, namely, the president of AIBC—

Q. That was you.

A. —an official of Brunswick—

[3693]

Q. That was Mr.—

A. Would you let me finish?

Q. No, I would like to get this in segment form. It had three officials?

A. Three officials.

Q. One was yourself, is that right?

A. The president of AIBC.

Q. Who was the next one?

A. It was an official of a bank in New Jersey, National State Bank.

Q. What was his name?

A. Mr. Marshall.

Q. You say there were three. Who was the third man?

A. Mr. Nieman—I believe it was Mr. Nieman.

Q. Who is he?

A. Mr. Nieman, he is an employee of Brunswick, an officer.

Q. May I ask you, sir, whether prior to the bankruptcy sale of AIBC you had any conversations with—Mr. Nieman, is it?

A. Yes, sir.

Q. —concerning the possible disposition of the 26 centers owned by AIBC at that sale?

A. No, sir.

[3694]

Q. None whatsoever?

A. No, sir.

Q. Did you have any knowledge of how much money was owed by AIBC to Brunswick before the bankruptcy?

A. It was better than $10,000,000.

Q. Do you know that to be so?

A. Yes, sir.

Q. Do you have any knowledge of the value of the 26 centers which had been owned by AIBC, prior to the bankruptcy sale?

A. The value?

Q. Yes.

A. Can you explain value to me?

Q. First, do you know what AIBC paid for them?

A. In total, the 26, I can't recall what the 26—because we had over 30 centers at one time. I don't remember specifically what we paid in total for the equipment; no, sir.

Q. Do you have any idea of the number of lanes that the 26 AIBC centers had?

A. I don't recall.

The Court: 26 centers, you mean?

Mr. Hoffmann: Centers.

A. I don't recall the number of lanes. I could start

[3695]

listing them now and put them together.

Q. You are not carrying that in your head, is that right?

A. Sometimes I try to put some things out of my head. I don't remember that. It wasn't important to me.

Q. Do you know whether or not, prior to the bankruptcy sale, in November of 1961, Brunswick sought to take over AIBC for a sum of money?

A. I have no knowledge of that.

Q. What were you in '61?

A. I was vice-president and general manager. My job responsibilities were to run the centers.

Q. You weren't told anything about an offer of $100,000 to buy AIBC?

A. No, sir.

[3696]

Q. But you did know something about a voting trust; you do know that?

A. Yes, sir.

Q. When did that voting trust start?

A. In the early 1960's. That was—I believe it was either '60 or '61.

The Court: Who were the trustees, you, Nieman, and who else?

The Witness: An official of the bank here in New Jersey, Mr. Augie Marshall. We weren't the original trustees.

Q. Now, sir, Mr. Marshall was the bank man?

A. Representative of the bank; yes, sir.

Q. And Mr. Nieman was the Brunswick man, is that right, on the voting trust?

The Court: Who was the receiver, do you recall?

The Witness: Mr. Sanford Silverman.

The Court: Silverman.

Q. Do you know how it came to pass that a Brunswick man was put on the group of trustees?

A. No, sir.

Q. You know nothing about it?

A. No, sir.

Q. Do you have any recollection of it?

[3697]

A. No, sir.

Q. In 1970 you were asked the following questions and gave the following answers:

"Question: The second trustee was to be designated by"—I am reading from page 2405—"The second trustee was to be designated by Brunswick and this position has been filled at all times by a Brunswick officer."

I was then reading from a document I held in my hand.

"That is correct, as far as you know?

"Answer: It was filled by a Brunswick employee. I don't know whether he was an officer of the corporation. I don't recall.

"Question: But it was filled by a Brunswick employee, is that your point?

"Answer: Yes."

• • •

[3710]

Q. Now, then, sir, do you have any way of knowing whether the only benefits given the Airborne Instrument league members are those to be found on the back of Defendant's Exhibits 51 and 52 for identification?

The Court: Why not let him look at them?

Mr. Hoffmann: Oh, sure. I believe they are the same, except for different names and signatories.

A. It is my understanding that that is all that has been given. That's what we warrant when we sign one of these.

Q. Do you have any way of knowing whether that is all-inclusive, whether or not at different points of time during the life of the contract there may not

[3711]

have been other benefits given?

A. There are ways of checking it.

Q. Do you know, here and now, on the stand?

A. No.

Q. You don't know. Now, you valued these benefits, didn't you, in your testimony on direct examination, you put a price on some of these benefits—turkeys per pair of lanes, bottles per pair of lanes, and so on?

A. Yes, sir.

Q. Did you put a price down for free games?

A. No, sir.

Q. Why not?

A. I didn't think they had any value as far as—to me, it is a redemption of only about 18 per cent. I didn't establish a value.

Q. Bowlers usually pay for bowling, don't they, at BCOD centers?

A. Yes, sir.

Q. When you give them a game free it is worth something, isn't it?

A. If they use it; yes, sir.

Q. If they use it, of course.

A. If they use it.

[3712]

Q. Now, is it your point that since you didn't know whether they used it or not, you didn't put it down?

A. I have no idea whether they used them or not.

Q. Was that your reason for not giving a price—

A. Yes, I have no knowledge.

Q. You say that a free game has no relevance, less relevance than a turkey at Thanksgiving; is that your statement?

A. No.

Q. Well, you say a turkey at Thanksgiving has relevance, don't you put it down here?

A. Yes, but we purchase the turkey and we hand it to the person, the slip.

Q. The free games you didn't have to purchase to give over to the bowler, is that right; is that the difference?

The Court: Answer, Mr. Rudo.

A. Yes.

Q. However, when the bowler bowls, he pays normally for the games which he bowls, doesn't he?

A. Yes.

Q. Whether they cost you anything or not; isn't that so?

[3713]

A. He pays for them when he bowls.

Q. So if you give him a free game, it is something of value to him, isn't it?

A. Something of value to him, yes.

• • •

Q. In the various estimates or conclusions that you described about prices in your direct examination today, did you make any allowance for those free

[3714]

games?

A. I don't understand the question.

Q. Maybe if it is read back slowly, you will.

(Record read.)

A. Prices in relation to what, sir?

Q. Prices for bowling at BCOD centers, they never go down; do they; wasn't that your testimony?

They only go up; isn't that your testimony?

A. The average price; yes.

Q. The average price, is that some special meaning, 49 point something cents, that you testified about before?

A. Yes.

Q. What kind of an average is that?

A. That's an average of the mixture of the different types of bowling, whether it be senior citizen, junior bowling, adult bowling at night, adult bowling in the daytime.

Q. How much did you take off from the 49 point, what was it?

A. 49.9.

Q. 49.9 cents for free games, anything?

A. No, sir.

Q. And you're talking about an average price of 49.9 cents, you are not talking about the price paid

[3715]

by the bowlers; isn't that so?

A. No, sir, it is the price that we collect.

Q. I thought we had agreed just a half minute ago that if a bowler pays 60 cents a game, and if he has one game free, and he pays for one game, he is really paying just 30 cents for each of two games; isn't that so?

A. I recorded 49.9 as the pay price. That we receive.

Q. Without allowance?

A. Without allowance; that's what I said.

Q. Now, could there be any particular promotions that Brunswick has which you didn't have reflected in the 49.9 cents?

A. Yes.

Q. For example, how about complete breakfast in California; did you take those into account when you are figuring price?

A. They are not part of the 49.9.

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[3728]

Q. Sir, do you know here and now every inducement given by Sunset in 1965 from your own memory sitting here on the stand?

A. I think I do.

Q. Can you without reference to this contract tell us what they were?

A. Without reference to this contract?

Q. Yes, from your mind, from your memory.

A. Trophies for the first place, second place and third place teams; high game, high average, high series for men and women; eligibility in the national tournament; eligibility for awards program; dollar for a buffet at the end of the year; a dollar rebate per bowler; a bottle a pair; a turkey a pair.

Q. Anything else that you can think of?

A. And a drink at Christmas.

Q. Anything else; does that exhaust your recollection?

A. That's it.

Q. What is a summer coupon book?

A. Summer coupon book is ten games given to the bowlers to be bowled one per week for a ten-week period beginning after the league season.

[3729]

Q. No extra charge for those, those are thrown in, free games, is that right?

A. That's right.

Q. Now, sir, you didn't seem to remember in your listing the existence of the summer coupon book. Bowl-Your-Way-To-Europe, did I understand that your testimony, in answer to a question of Mr. Seeley, was that it was in formation in the Spring of '65; was that your testimony?

A. That's right.

Q. Do you have any recollection as to when it went into effect?

A. We had a tournament in 1965, a national tournament.

Q. Yes. And do you know when the tournament started?

A. In the name of Bowl-Your-Way-To-Europe, it started in—this is the eighth year, so it is eight years previous to this year. This is the eighth year.

Q. That brings it back to what year, '65?

A. '66, '67, '68, '69, '70, '71, '72, '73.

Q. '65?

A. Yes.

Q. Do you know when in 1965 it began?

A. I think it commenced with the leagues that bowled in the winter of 1965.

[3730]

Q. With the leagues that bowled in the winter—

A. 1965.

Q. This contract for Airborne Instruments, that was for a period of 32 weeks commencing September 13, 1965, and ending April 25, 1966, isn't that so?

(Document shown to the witness.)

A. That's correct.

Q. Didn't Bowl-Your-Way-To-Europe make all these Airborne Instrument league members eligible for participation?

A. Yes, sir.

Q. Wasn't that another benefit which members of that league achieved by bowling with Sunset Bowl?

A. I put it in the $50 amount that I said for the awards.

Q. While you were doing that, there were some items which I thought might have some value. I wonder if you

considered those. "The monthly winners in each classification will receive a plaque recognizing them as a winner in their classification with their achievement properly inscribed."

How much did such a plaque cost?

A. Maybe $1.25.

Q. That is an item, however, of benefit to the participant who wins, isn't that right?

[3731]

A. That's right. That's spread out all over the house, all the leagues in the house.

Q. This is a plaque which recognizes them as a winner, and it says, "The monthly winners will receive" such a plaque.

A. But not monthly winners from every league, sir.

Q. Well, each winner's name will be placed on the Bowl-Your-Way-To-Europe tournament wall display in the bowling center, that's the second thing, isn't it?

A. And that's a visible display—

Q. That is what you are talking about, a visible display, isn't it?

A. Yes, sir.

Q. But he also takes home a plaque, doesn't he, the winner?

A. That's two winners a month from all the leagues.

Q. But each winner takes home one, doesn't he?

A. The winner for that month. There are only two winners out of all the bowlers.

Q. You said that. Each one of those takes home one, doesn't he?

A. Yes. $2.50.

Q. Now, sir, how many people in the course of the year go to Washington in connection with—

[3732]

A. Two.

Q. How many people go to Europe in connection with it?

A. Four.

Q. The four are the husbands and their wives, or their wives and their husbands?

A. That is correct.

Q. Did you, in your calculations as to the value of this tournament, or promotion, include the $500 cash which is given to the traveller to Europe?

A. It is part of the $50.

Q. You didn't mention it this morning, did you, in your testimony?

A. I thought I said the entire awards program. I don't recall.

Q. So if you go, you get, in addition to a free trip to Europe, you get $500 in cash, don't you?

A. If you are from that league.

Q. If you are from what?

A. The league.

Q. You mean each sanctioned league bowler bowling in a sanctioned league that qualifies for the BCO awards program, is that what you mean by the league?

A. Well, there are 160 bowlers in the hypothetical

[3733]

case in this league, sir. They might not have had a winner.

So there was no money expended for this league.

Q. What league are you talking about when you say, "this league"?

A. The hypothetical league.

Q. Are you talking about Airborne Instruments now? You don't know whether they had one or whether they didn't.

A. No.

Q. They were a sanctioned league, able to be eligible for Bowl-Your-Way-To-Europe, weren't they?

A. That's right. The $500 comes for the final, at the end. That is given to the two ultimate winners that go to Europe.

• • •

[3737]

Q. Sir, I asked you before the recess as to whether or not you recalled any attempts to buy AIBC in 1961.

A. Yes, sir.

Q. And what was your answer?

A. I do not recall any attempt, no knowledge.

Q. Ultimately all of the AIBC centers came into the hands of Brunswick, didn't they, at the bankruptcy sale?

A. Not all at the bankruptcy sale.

[3738]

Q. All but one, isn't that right, at the bankruptcy sale?

A. That's right.

Q. And the one exception was Mr. Vitolo's premises, isn't that right?

A. That is correct.

Q. That came back to Brunswick very soon thereafter, didn't it; how long after?

A. Approximately a week.

Q. And in order to make sure that that went back to Brunswick in approximately a week, didn't you call Mr. Hanigan, the head of the company, at 11:00 o'clock at night?

A. I called Mr. Hanigan, but not to make sure that that came back into the AIBC—I mean to Brunswick.

Q. How about the timing, was it 11:00 o'clock at night?

A. Yes, sir.

Q. It had nothing to do with this acquisition?

A. Mr. Vitolo asked me if Brunswick was interested in purchasing.

Q. And at 11:00 o'clock at night you called the head of the company to find out whether they were interested in purchasing; is that your testimony?

A. 11:00 o'clock in the Eastern zone or in the

[3739]

Central zone, Mr. Hoffmann?

Q. My dear friend, you know better than I. I didn't place the call.

A. I placed the call from New Jersey. It was 11:00 o'clock here and 10:00 o'clock here in Chicago.

Q. And was Mr. Hanigan in Chicago at 10:00 o'clock at night?

A. Yes, sir.

Q. Do you normally transact business with Mr. Hanigan at 10:00 o'clock at night?

A. I was told to call Mr. Hanigan that night at home.

Q. Regardless of the hour?

A. Yes, sir; I was told to call him.

• • •

[3790]

Q. ° ° ° Now, you are the vice president in charge of bowling operations; is that right?

A. That's right.

Q. Do you have under your powers, supervision, the sale of Brunswick operated bowling centers?

A. No, sir.

Q. Do you have anything to do with that matter?

A. No, sir.

Q. Do you know anything about any formula used by Brunswick for the purpose of quoting a price for its operated centers?

A. I am not familiar with the exact formulas.

Q. Do you know in exactly what the formula is, in an approximate way?

A. I believe that the history of the center is recorded, the forecast for ten years is made, and there is a multiple of cash flow performance that's used.

Q. Do you know how the forecast is made for the future?

A. No, sir.

Q. Do you know what the multiple is?

A. No.

Q. You are not in a position to offer any

[3791]

bowling centers for sale from the witness stand, are you?

A. No, sir.

Q. Now, you paid, that is to say, Brunswick paid in $450,000 at the AIBC sale, is that right, for the AIBC centers——

A. It was approximately that.

Q. And that was for 25 centers?

A. Yes, sir.

Q. Can you come along with me in a little arithmetic. I don't have my computer here.

25 into 450, I get $18,000 a center.

Can you do that in your head; does that jibe with you?

A. No, sir.

The Court: What did you ask him, if he could do it in his head? You didn't.

Mr. Hoffmann: I wasn't testifying, your Honor.

Q. But, sir, you got the last one, the 26th one, by

paying Vitolo $5,000 over what he paid in effect; isn't that so?

A. No, sir.

Q. You're saying "No, sir."

Vitolo bought a center; isn't that right?

[3792]

A. Yes.

Q. You know that?

A. Yes.

Q. At the AIBC sale?

A. Yes.

Q. And then Brunswick bought it from Vitolo, you know that; isn't that so?

A. I know that.

Q. And Vitolo, according to the testimony, was given the fruit of the operation for a week or about a week of the center; do you know that to be so?

A. What do you mean by "fruit"?

Q. He was given the money, the receipts, for the week.

A. Yes.

Q. You know that was about $5,000?

A. It would have been. I'm not sure.

Q. If it could have been, isn't that then $5,000 which Vitolo received above what he paid for the center; isn't that right?

A. I never calculated it. I don't know.

Q. Well, did you, you, Brunswick, pay Vitolo back for what he put in for the center?

A. We paid him the $18,000.

Q. He held onto $5,000; isn't that so?

[3793]

A. He held onto the receipts for the period of time that he operated.

Q. With Brunswick's approval?

A. It was part of the documentation, yes.

Q. That's Brunswick's approval, is it not?

A. It was part of the agreement.

Q. Will you please answer my question. Didn't Brunswick approve that transaction, that he should hold on to the receipts for a week?

A. Yes, sir.

• • •

[3795]

RE-DIRECT EXAMINATION.

By Mr. Seeley:

Q. Do you know, Mr. Rudo, for approximately how many dollars AIBC was indebted to Brunswick at the time of the bankruptcy sale?

A. I believe it was better than $10 million, sir.

• • •

[3929]

KENNETH BROOKS ABERNATHY

CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Now, do you have any idea in millions of dollars what revenue Brunswick received from operating domestically its bowling centers?

A. Yes.

Q. And what is that figure?

A. I would estimate last year it reached the proportions of six or $7,000,000.

Q. And all of bowling, you say, is approximately one-third of the total revenue of the Brunswick organization?

A. Very roughly.

[3930]

Q. What is the total revenue of the Brunswick organization, very roughly?

A. About, I think last year, was in the vicinity of $35,000,000, after taxes.

[3931]

Q. Before taxes?

A. After taxes.

Q. Before taxes what was the revenue?

A. Before that, just roughly double that.

Q. Now, sir, do you know of any plans that Brunswick has to phase itself out of the bowling operating division, to get out of it?

A. No, unless they could sell them.

Q. Unless they can sell what?

A. Sell the bowling centers.

Q. How many people, if you know, work in connection with Brunswick's operation of domestic bowling centers?

A. I would estimate several thousand.

Q. Are they all looking for new jobs, do you know?

A. Not to my knowledge.

Q. Are there any which have insurance of permanent employment at Brunswick?

A. As much as any of us do, I believe.

Q. Do they partake of Brunswick's pension plans and the like and other employment benefits?

A. I think they do.

Q. They are not there as temporary employees, are they?

[3932]

A. Indeed, sir, over all these years since your first acquisition in May 1964 you succeeded in selling seven centers, isn't that right?

If you know.

A. I'm not sure, but I think that could be right.

Q. A lot of people in Brunswick are living on the assumption that you are not going out of the bowling operating business in the States, isn't that so?

A. That may be.

Q. Are you one of them?

A. I don't think so. I don't believe we will be going out of the bowling business.

• • •

RE-CROSS-EXAMINATION.

[3938]

Q. Now, do you agree with Mr. Hanigan that the bowling business is a good business, the bowling operating business?

A. Yes, it can be a good business.

Q. Well, is it a good business for Brunswick now?

A. Well, it is very difficult to salvage the bad centers but—

Q. Is it a good business now for Brunswick?

[3939]

A. I think it is.

• • •

[3986]

JOSEPH A. RICE, called as a witness on behalf of the Defendant, having been duly sworn, testified as follows:

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[3992]

DIRECT EXAMINATION.

By Mr. Seeley:

Q. Mr. Rice, by whom are you employed?

A. Brunswick Corporation.

Q. In what capacity?

A. I am corporate credit manager.

Q. When did you first go to work for Brunswick Corporation?

A. 1959.

Q. Will you please trace the various positions which you have held with Brunswick Corporation and state generally what your duties were in each of those positions?

A. I started with the company in 1959 as a zone accounts manager. That was the collection of bowling receivables.

In 1961 I became regional manager responsible for a greater area.

In 1963 I became the national accounts credit manager responsible for collection of major chain accounts.

In 1965 I became operations manager for Latin America and the Far East——

[3993]

The Court: Can the jury hear him?

A. (continuing) Responsible for our operations in those areas.

In 1967 I became manager of credit and collection services in the home office, responsible for our trade receivables.

In 1968 I became corporate credit manager.

Q. Were all of those positions that you have described in connection with credit?

A. Yes.

• • •

[3994]

Q. Was it and is it the regular business practice of the Brunswick Credit Department to keep a file of conditional sales contracts for bowling equipment and extension agreements made in connection therewith?

A. Yes.

Q. And was it and is it the regular business practice of Brunswick Corporation to maintain ledger cards or ledger sheets with reference to each installment equipment sale account?

A. Yes.

Q. And was it and is it the practice of the Credit Department to keep in the file also correspondence or internal memoranda relating to the account?

A. Yes.

• • •

[4011]

Q. Would you please, if you can, from the same sources give a history of the equipment contracts for Pueblo Bowl-O-Mat?

A. Brunswick sold 40 lanes and pinsetters to Pueblo Bowl-O-Mat, and equipment was installed in August 1960.

The lane contract was sold for $208,942 and with a down payment of 31,341, and a finance charge of 25,308 or deferred balance of $202,908.

[4012]

It was to be paid in 40 payments of $5,073 each on a seasonal basis, with the first payment due in October 1960.

The account paid current through January 1962, and there were no payments from January 1962 through March 1964.

The account was rescheduled in July 1963. The balance at that time was $142,036. The additional finance charge was $35,576. The new deferred balance was $177,612. It was to be paid in 64 payments of $2,775 on a seasonal basis with the first payment due January 1964.

The total delinquency that we deferred at that point was $76,091. The account was carried delinquent on a 60- to 90-day basis from January 1964 to October '64, was maintained current to November '65, and then it was paid in full in February 1966.

Q. If you can do the same thing now, please, for the——

A. I haven't finished the pinsetter contract for Pueblo.

Q. I'm sorry. I didn't mean to interrupt you, sir.

A. We sold 40 pinsetters to Pueblo Bowl-O-Mat. The selling price was $330,480. The down payment was

[4013]

$26,480. The finance charge was $79,040, leaving a deferred balance of $383,040. It was payable at 12 cents a line, with minimums during the winter months of $5,000 and during the four summer months of $2,000.

The first payment was due October 1960. The account paid $61,176 to December 1961 and was delinquent $1,824 at that time.

There were no payments from December 1961 through October 1963 and the delinquency reached $82,824. The account was rescheduled in July 1963. The balance at that time was $321,862. The additional finance charge of $19,131 was added, leaving a deferred balance of $340,993. It was to be paid in 64 payments at $5,328, with the first payment due October 1963.

The account paid October 1963 through August 1964 $21,312 and was delinquent at that time the same amount,

$21,312. The delinquency was paid in 1964, and maintained current and paid in full in February 1966.

Q. Does that finish with Pueblo?

A. With Pueblo, yes.

Q. Belmont Lanes, please, in Pueblo.

Mr. Seeley: Your Honor, I wonder if I could

[4014]

be getting something photostated that I am going to need to use in a few minutes.

The Court: Mr. McNeill or Mr. Dwyer, will you take that to the Clerk's office to have copies made.

(Mr. Dwyer leaves the courtroom.)

Q. Proceed.

A. Brunswick sold 24 lanes and pinsetters to Belmont Lanes. They were installed in 1962 on a combination contract. Both the lanes and pinsetters were on one contract. The cash sale price for this package was $352,229. The finance charge was $88,761. The down payment was $35,225, leaving a deferred balance of $405,765. It was to be paid in 64 seasonal installments over eight years at $6,340 each, starting October 1962.

They paid $1,096 in October 1962 and the account was rescheduled to start with payments in March 1963. No payments were received. The account was rescheduled to start again in October of 1963, spreading the March, April and May installments over the remaining part of the contract. It was payable in 61 installments at $6,634 payments. No payments were received and the account was rescheduled in December 1963, payable in 64 installments at $7,109, with payments to start in

[4015]

October 1964.

The account was repossessed in January 1965. The balance was $454,952.

• • •

[4049]

CROSS-EXAMINATION.

By Mr. Hoffmann:

• • •

[4060]

Q. Now, the policy, you said, of Brunswick was not to discriminate?

A. Yes.

Q. When you speak of a policy, you are talking

[4061]

about what you described, aren't you, there are times when Brunswick will forbear collection; isn't that so?

A. Yes.

Q. There are times when Brunswick will insist on collecting; isn't that so?

A. Depending on circumstances, yes.

Q. And one of the things that affects the judgment in making that decision is what you call verified need?

A. Yes.

Q. Those are your words, aren't they?

A. I think they are Mr. Abernathy's.

Q. Does that mean that if we have center A, and the manager of center A says, Look, Brunswick, I am a very poor man, I have got five kids, seven grandchildren, I want to send my children to college, I am a very poor man.

Look, let me show you that I am poor. You can verify that.

Does that mean that where he shows you his need that he really is hard up for money, that you will extend credit to him?

A. That was only one of the factors.

Q. That's what is meant by "verified need"?

A. I said that was only one of the factors.

[4062]

Q. That is a factor?

A. Yes, but also capacity and capital.

Q. Come with me along this path: At the same time—

The Court: Off the record.

(Discussion off the record.)

Q. At the same time in the same town there is center B, in the same town, the manager says to the Brunswick representative, I am a bachelor, I run some sports cars, I like to gamble a little, I spend my money as much as I can get, and I am trouble on my bill to you, and I need an extension of time.

Is that what you mean by "verified need"?

A. I wouldn't say so.

Q. You mean you make a judgment as to the kind of need, if center A can persuade you, whether it is grandchildren or what, that this is a good situation for you to help out, an element of judgment would be his need has been verified, we will help him out, but if center B doesn't seem to be so nice a guy, you don't like what he does, the way he spends his money, that you won't extend it for him; is that the meaning of what you are talking about when you talk about "verified need"?

A. That was a pretty long question.

[4063]

Q. I think you followed with me, didn't you?

A. Well, verified need was only one of the elements. Being a nice guy is——

Q. Isolating that element of "verified need."

Mr. Seeley: I think you can have a medium long answer to a very long question.

Mr. Hoffmann: I don't see any reason for that on cross-examination.

I will be guided by his Honor.

The Court: Do you remember the questiou?

(Record read.)

The Court: Anything further to say?

The Witness: Well, first of all, we wouldn't consider verified need on the individual. We are talking about a business, I assume.

When we refer to verified need, we are referring to the capacity of the business to pay or not to pay.

By Mr. Hoffmann:

Q. These centers are generally not publicly owned corporations, are they, these independent proprietors?

A. I think our records would show that 60 to 75 per cent of our customers were corporations.

Q. But not publicly owned corporations; isn't

[4064]

that so?

A. That's probably true.

Q. Some are, of course.

A. Yes.

Q. Where it is not a publicly owned corporation then chances are it is a family unit, isn't it, family group that's got a center going?

A. Normally there would be various groups of investors, not normally a family.

Q. Well, sir, aren't there individuals who run these bowling centers?

A. Of course.

Q. Partners who run the bowling centers?

A. Yes.

Q. So in order to answer my question, let's not bring in the corporations, let's keep them out, shall we?

A. Most of the businesses were corporations.

Q. Address yourself to the lesser part of your business, which is not with corporations, but with individuals.

Now, you have verified need. You say you have a policy of nondiscrimination.

Can you explain to me to the extent that you considered in your judgment as to forebearance of

[4065]

repossession the verified need of the center, can you explain to me whether you have a policy that uniformly applies verified need to all comers?

A. I tried to explain. Verified need is only one of the elements.

Q. I'm just asking you about that one element.

A. And probably wouldn't apply to what the man's personal problems are. If—we were talking about the business and what the need would be for the business and what the cost would be if there was a verified need to pay on any refinance basis.

Q. Now you are concerned with capacity to pay; is that right?

A. Yes.

Q. Is that the same thing that you are talking about when you talk about verified need?

A. No.

Q. Let's confine ourselves, if we may, to verified need. What do you mean by it?

A. Well, what we really mean is that we wouldn't extend an account unless there was a need to be extended, if the business was making money, and compared its installments, we would not consider him for

[4066]

an extension, if they would show us that the business would not produce enough cash at this particular point in time to meet the installments due to our company then we would consider an extension.

Q. Is it fair for me to infer from what you just said that the worse the fellow's business, the better his chance of getting an extension of time; isn't that what you just said?

A. Not necessarily. That would be the first criteria. You'd have to have a verified need.

Q. He has to be in pretty bad shape, is that what you mean, to get an extension?

A. He'd have to have a need before we could consider him for an extension.

After he has a need then we have to investigate his capacity to pay on a refinance schedule.

Q. Do you in considering this so-called verified need ask the independent proprietor, customer of Brunswick, to supply you with information as to how he uses all his income?

A. Yes.

Q. Does that go into his personal affairs as well as into his business affairs?

A. Well, it would depend on whether he was running the company as a proprietorship or as a corporation.

[4067]

Q. For the purpose of this line consider only a fellow who runs it as a sole proprietor.

A. Then we would examine—we examine the business, and for instance, what kind of salary he was paying himself.

Q. If the way he spends his money met with your approval and the need seemed to be there, this would be a factor which would lead you to extend credit; is that right?

A. To consider an extension.

[4068]

Q. Consider it; it is one of the factors; isn't that your testimony?

A. Yes.

Q. Now we turn it around.

A. Pardon?

Q. Now we turn it around, that a proprietor shows that he is making a lot of money, he has got real estate in his own name, has got a good balance in the bank, seems to be quite successful. But he owes you money.

And you look at his books and you learn that he hasn't been paying you simply because—not because he can't, but because apparently he doesn't want to, he wants to put the money to some other use.

Have you run across such a case?

A. Yes.

Q. Does he get credit extended to him?

A. No.

Q. So the criteria you use in deciding whether or not you should extend credit is—at least in this area of your performance—is a judgment, isn't that right, about an in-

dividual, and how he conserves or wastes his money; doesn't that follow?

A. No, I don't think that follows.

Q. Why not?

[4069]

A. It is based on what the business produces, it is not—

Q. I gave you the two cases. I gave you the case—

A. You changed it.

Q. I gave you the case of the wealthy wastrel; he doesn't get it; and I gave you the case of the poor man that's trying hard, but his business is unsuccessful. He gets it; isn't that your statement?

A. I don't think your second example is what you just summed up.

Q. In any case, without going through all these hypothetical situations, a judgment is made, is it not—

A. Yes.

Q. —by particular people who have the responsibility—

A. That's true.

Q. —as to whether or not they will extend credit to a particular bowling proprietorship; isn't that so?

A. That's true.

Q. Now, as to that judgment in this area of need, verified need, is there any objective policy which is applied?

[4070]

A. I didn't understand the question.

Mr. Hoffmann: Maybe the Reporter may read it back.

The Court: Read it back, Mr. Bremer.

(Question read.)

A. Well, that is the policy. The first thing is to establish a need.

Q. But decisions are made as to need in terms of particular factors; they haven't been listed anywhere, have they: This is the kind of factor we list here which will lead us to say: No extension of credit; this is the kind of factors that say: Extension of credit; do you have such lists?

A. There were practices, guidelines. Guidelines, practices—

Q. Do you have such with you?

A. No.

Q. The policy that you are talking about today, is that all summed up in pieces of paper somewhere, guidelines?

A. The policy; yes, the policies we have. We have policies. That's really what I mean, policy or guidelines, procedures, yes.

Q. You have that all typed out, printed out, for use by people who extend credit?

[4071]

A. That's right.

Q. Do you know where that can be found?

A. Yes, I have a copy of the manual in my office.

Q. Do you have it with you?

A. No, I don't have it with me.

Q. Do you have it written in the tablets of your memory?

A. No, not entirely.

Q. You have been using it a long time, haven't you?

A. It is not committed to memory.

Q. What do you do whenever you are going to extend credit, do you look it up somewhere?

A. Oh, I understand the meaning of—

Q. You understand the policy, is that right?

A. Yes.

Q. What is the policy about c.o.d.?

A. When a customer lacks capacity, the character, the capital to pay his debts, we put him on c.o.d., in general.

Q. The four C's?

A. There are three there, yes.

Q. The three C's. Did you ever hear of any of your customers who were paid in full, except for some insubstantial amounts, being put on c.o.d.?

[4072]

A. Being paid in full has nothing to do with capacity or capital.

Q. Oh, do you have so many customers—who over the 1960's paid you millions of dollars, and it has nothing to do with whether or not they go on c.o.d.?

A. A lot of—

Q. Where is that policy written down?

A. There are a lot of customers. What policy?

Q. Do you have a c.o.d. policy that is written down?

A. There is a policy—

Q. When you put a man on cash on delivery, do you have something that is printed that says when to put him on cash on delivery?

A. When the credit manager makes a judgment that he can't pay—can't or won't pay.

Q. Do you know of any examples of people being put, or proprietorships being put on c.o.d.?

A. Yes.

Q. Was the plaintiff one?

A. I don't know about that.

[4073]

Q. You didn't hear that the plaintiff was put on c.o.d.?

A. I know that he was, but I directly do not know.

Q. What?

A. I was not involved directly at that time.

Q. You weren't directly involved?

A. Not at that time.

Q. Do you know where it was written that the plaintiff should be put on c.o.d., in the policies of the company; was it up on the bulletin board somewhere: All people who pay many millions of dollars to Brunswick bowling centers should be put on c.o.d.; was there anything like that put up on bulletin boards?

A. Certainly not.

Q. On big printed documents, or pieces of instruction sent around amongst the Brunswick credit people?

A. Of course not.

Q. Anything like that?

A. No.

Q. No. There was some formulated policy somewhere about that, however, is that your point, nondiscriminatory?

A. Nondiscriminatory.

Q. How many people did you put on c.o.d.?

[4074]

A. I really don't have a number.

Q. Do you know of anybody who was put on c.o.d. who paid as much money to Brunswick as did the NBO?

A. I'm sure there are examples.

Q. You are sure there are, but you don't know what they are?

A. No.

Q. Sir, would you come this far with me, that if somebody owes Brunswick a lot of money, and somebody has paid all he owes to Brunswick, it would be discriminatory to put the man who has paid the money on c.o.d. and not put the one who didn't; would you come that far down the road with me?

A. No, I would not. What——

Q. It is nondiscriminatory?

A. What has happened in the past has nothing to do with what might happen in the future. Credit is extended on what might happen in the future.

Q. Was there any indication that Dan Lieblich was going broke, after he paid Brunswick?

A. I don't think he was better off. All he did was transfer the debt from Brunswick to a bank.

Q. Do you know that?

A. Yes, I do.

[4075]

Q. Wouldn't that have been a welcome prospect for Brunswick, for most of its customers—during the '60's—that they pay Brunswick in full and owe a bank?

A. Absolutely.

Q. Wouldn't that improve their credit status with Brunswick rather than disimprove it?

A. Not necessarily. One has nothing to do with the other.

Q. You mean a man doesn't enjoy good credit with Brunswick by paying his bills?

A. It's a factor. It is one of the factors we use. Experience certainly is one of the factors that we use.

Q. The experience of paying bills——

A. That's right.

Q. —and paying in full. Do you know how many millions of dollars NBO paid Brunswick, do you have any idea?

A. Approximately.

Q. How much?

A. I'd say about five million or something like that.

Q. Do you think more?

A. Possibly.

Q. How about six?

A. I don't know.

[4076]

Q. Will you take seven?

A. If you give it to me.

Q. A man pays $7 million to Brunswick, that doesn't improve his credit status over a man who doesn't pay Brunswick a dime, is that your testimony, is that what you want this jury to believe?

A. It would depend on the other man—what he owed.

Q. If he owes a lot of money, the other man, he owes $5 million, and he is not on c.o.d.; the nondiscriminatory policy, is that what you are saying?

A. The other customer is—I don't understand the hypothetical. You will have to repeat it.

Q. You don't understand the hypothetical?

A. No.

Q. Do you want me to spell it out for you?

A. Yes.

Q. There exist two people. We will call the first one

A. A owes Brunswick $5 million for pinsetters and lanes, all right?

A. Right.

Q. B has paid Brunswick $5 million for pinsetters and lanes, doesn't owe them money for pinsetters and lanes. Okay?

A. Yes.

Q. Now, it is B that is put on c.o.d., cash

[4077]

on delivery; A is not put on c.o.d. My question is: Is that nondiscriminatory?

A. You haven't given me enough facts—

Q. More facts are needed?

A. Wait a minute. You haven't given me enough facts in either the A or B case to make a decision on it.

Q. It is not enough that you be paid; you can pay in full and still get cash on delivery; is that your testimony?

A. It would be one of the factors. There are many factors involved in determining whether you are going to extend credit or not. Experience—

Q. Such as to bring a lawsuit against Brunswick, that would be a factor, wouldn't it?

A. Yes.

Q. And wasn't that a factor that was used here?

A. I don't know.

Q. Such as running an advertisement in the Wall Street Journal that "We are using AMF equipment," is that a factor for putting somebody on c.o.d.?

A. I would say no.

Q. What?

A. No.

Q. Do you know what happened to Fair Lanes?

[4078]

Do you know why they were put on c.o.d.?

A. Yes, I do.

Q. They came off it after a while, didn't they?

A. Yes, they did.

Q. How long were they on it?

A. I couldn't tell you the exact time.

Q. A matter of years?

A. Probably.

Q. Do you know what the occasion of their coming off c.o.d. was?

A. Yes.

Q. What was that?

A. They renegotiated a sale to them, on credit terms.

[4079]

Q. They bought some more equipment, didn't they, a sizeable amount?

A. Yes.

Q. Isn't that what happened?

A. Yes.

Q. And that was reasonable, taking them off c.o.d. and giving them credit. Now, they are going deeper into debt, unless they pay you cash, isn't that so?

A. You are selling equipment during the years when they paid cash. We negotiated a credit transaction.

Q. It was a day or two after, I put it to you, an advertisement appeared in the Wall Street Journal about Fair Lanes, that they were favoring AMF, that they went on c.o.d., isn't that so?

A. I assure you that advertisement had nothing to do with AMF going on c.o.d.

Q. You are familiar with the advertisement?

A. I am very familiar with it.

Q. You testified this morning about Belmont in Pueblo and Imperial Bowl, didn't you, in Fort Lauderdale, among other things, you testified about Pueblo—Belmont Bowl in Pueblo, and Imperial Bowl in Dania, Florida, is that right?

A. Yes.

[4080]

Q. Addressing yourself first to Imperial Bowl—

A. To which?

Q. Imperial. You have your records there, don't you?

A. I know, but you are talking about Pueblo and Belmont.

Q. I am going to ask you questions about both, so you might as well keep both out.

A. Okay.

Q. Do I understand correctly, from just a glance at your record, that for the lanes at Imperial Bowl the down payment in cash was 7.3 percent?

A. Yes, that is correct.

Q. Do you know what the normal down payment is?

A. I am not sure——

Q. I supply the suggestion that it is 20 percent; does that jog your recollection?

A. What you are saying, that we had a minimum, or something?

Q. I am not saying any such thing. Isn't the normal down payment required in a lanes contract a down payment of 20 percent?

A. As you suggested, we would rather have cash for the whole thing, and then we start to negotiate from there.

[4081]

Q. Is there no such thing as a normal down payment for lanes, is that your testimony, Mr. Rice?

A. I would say, "normal," wouldn't be the right word, maybe, "average."

Q. What is the average?

A. I really couldn't tell you.

Q. You don't know?

A. No, I don't.

Q. Is it more or less than 7.3 percent?

A. I would say for this period it would have been more.

Q. Would have been more.

So that if proprietor A buys lanes, on the average he pays more than 7.3 percent in cash as a down payment; that is the meaning of your testimony, is it not?

A. Yes.

Q. Now, as to pinsetters at Imperial Bowl, just a glance again at your records suggests that Brunswick paid the sales tax, is that right? Do you have the records in front of you?

A. I don't know that I could tell that from the records.

Q. We thought we could when we looked at it.

A. We paid the sales tax?

Q. That's the way it looked to us.

A. Well, I am sure we didn't.

[4082]

Q. Talking about Imperial Bowl and the automatic pinsetters?

A. I don't think I really have anything here that shows that, I mean would show it one way or the other. I don't know what you looked at that made you—this is the file (indicating).

Mr. Hoffmann: Would you have any objection, Mr. Seeley, if I move forward my questioning and ask Mr. Lieblich just to look at this?

Mr. Seeley: No.

(Mr. Hoffmann and Mr. Lieblich confer.)

Mr. Hoffmann: I will put this sales tax matter to to one side for the moment.

[4083]

Q. This Imperial Bowl matter, the contract was January '62, is that right?

A. I don't have my records.

(Records handed to Mr. Hoffmann by Mr. Lieblich, then to the witness.)

Q. Can you tell from the records, without too much strain, when the contract was entered into; January '62, is that correct?

A. Well, the conditional sale contract for—the execution date or installation date?

Q. What date do you have?

A. Well, the note was executed on December 26, 1961.

Q. And is it for performance during '62?

A. Yes, it was installed in February of 1962.

Q. Now, if you look at it, was there any payment required until October of '62?

A. No.

Q. Not until October. Do you know what is normal when somebody purchases pinsetters and lanes, does he normally get ten months before he has to pay, under the contract?

A. Well, four of those months we don't require any payments, June, July, August and September, and sometimes we don't require payments in May. But normally, the contract starts 30 days after installation.

[4084]

Q. And this isn't the normal thing, then, is it?

A. No.

Q. No. So, here we have a difference in extension of credit, do we not, between this contract and the normal contract; any policy written in fire on the walls of Brunswick as to that?

A. Well, the installation was in February of—

Q. Beg your pardon, sir?

A. I said the installation was in February of '62, so the normal starting date might have been like April 1st.

Q. Not like October 1962?

A. Well, then one payment would have been made in April and the next one might have been due in September.

Q. The center, however, opened in January of '62, did it not?

A. Not according to the information I have here.

Q. What is your information there?

A. I have an installation date and a sign-off sheet on the pinsetters. All I can show you here is that the payment—

The Court: A little louder.

A. (continuing)—all I can show you from what I have here is that the payments for the pinsetters—that

[4085]

they were installed in February and the payments started in March.

Q. Let me see that, please.

A. Sure.

(Shown to counsel.)

This is the beginning document and that was the first payment.

Q. Is this Imperial Bowl?

A. Yes, it is.

Q. What about the contract?

A. The pinsetter contract—the contract here says that the first payment was due March 5th.

Q. Well, sir, did you follow me too far down the road when you spoke of October? Where did you get that date?

A. The October date is for the lane contract.

Q. The lanes?

A. Yes. The pinsetter is paid on a year around basis.

Q. So we have suddenly gone from lanes to pinsetters. Sorry about that. I thought we were talking lanes.

A. You asked me about the installation date and the only way——

Q. About lanes is all we have been testifying about. As to lanes, it still remains October, the pay-

[4086]

ment, doesn't it?

A. That's true.

Q. That's true. So what you just had to say about pinsetters can be disregarded in connection with your testimony about what is normal and lanes, and so forth, isn't that right?

A. Well, you asked——

Q. You have two contracts, one for lanes and one for pinsetters, haven't you, there?

A. That's true. You said they were installed in January. And I said the record shows——

Q. Sir, I am only talking about lanes. Lanes is October, isn't that right?

A. The first payment——

Q. Whatever it may be for pinsetters?

A. The first payment date is October, that's correct.

Q. And the normal practice would have been for an earlier payment on the lanes, isn't that equally correct?

A. Yes.

Mr. Hoffmann: Thank you.

The Court: A five-minute recess, members of the jury.

(Short recess.)

[4087]

Q. The policy you say was not to discriminate in the giving or withholding of credit; is that right?

A. I didn't hear what you said.

Q. The Brunswick policy was not to discriminate in the giving or withholding of credit, is that right; that was your testimony?

A. Yes.

Q. Tell me, sir, do you know from your records how much Belmont paid, Belmont Lanes in Pueblo, California–Colorado, for the period 1962 to 1965?

(Record read.)

Mr. Hoffmann: Let me withdraw the question simply because of the California-Colorado——

The Court: I don't think Belmont paid Belmont Lanes. That's what I am objecting to.

Mr. Hoffmann: If that's what I said, that's wrong, your Honor.

The Court: I knew you weren't listening.

Mr. Hoffmann: I was listening; I didn't hear that. That was so preposterous it didn't even register in my ear drum.

Q. Do you know, Mr. Rice, how much Belmont paid to Brunswick——

The Court: That's better.

[4088]

Q. —for the period 1962 to 1965 for pinsetters and lanes?

A. I testified that they paid $1,096 in October 1962 and that they repossessed in 1965 without any other payments.

The Court: Repossessed when?

The Witness: 1965, in January of 1965.

Q. One thousand and how many dollars?

A. 96.

Q. $1,096 in October 1962, and that's all Belmont paid in those three years?

A. Yes. That's not all they paid, they paid on some open account purchases.

Q. I didn't hear you.

A. They paid on some open account purchases over that period.

Q. Things like the balls?

A. Yes.

Q. Gloves, shoes, maybe?

A. Yes.

Q. When Bowl-O-Mat, Pueblo, paid in full in January 1966, how much did Belmont owe at that time?

A. Belmont had been repossessed in January of 1965.

Q. It was already in the hands of BCOD, wasn't it?

[4089]

A. Yes.

Q. Do you know how much it owed at the time of repossession?

A. $454,952.

Q. Do you know how much Bowl-O-Mat, Pueblo, paid Brunswick at the time when it paid in full, do you know what its total payments to Brunswick were?

A. I could look at it.

Q. Do you have it there?

The original sales price on the lanes was $208,942, and the original sale price in the pinsetters was $330,480, so if they paid in full they must have paid $538,000 plus interest.

Q. That's the NBO payment; is that right?

A. Yes.

Q. Sir, in Pueblo, some $400,000 was not paid by Belmont, and some $500,000 was paid by NBO; is that right?

A. Yes.

Q. And are you aware that Mr. Lieblich was from time to time protesting about Brunswick's continued operation or permission granted to Belmont to continue to operate?

A. Yes.

Q. During the period of time when it did

[4090]

continue, it did so to the extent of over $400,000 in debt to Brunswick; is that right?

A. I—

Q. It owed, we just established that.

A. Yes.

Q. And we also established that NBO paid in full, didn't we?

A. Yes.

Q. Do you know whether NBO was asked or was suggested politely to it that it should pay its debts to Brunswick?

A. Whether Pueblo—Belmont, or Pueblo?

Q. I'm talking now of NBO.

Do you know whether Brunswick suggested or requested NBO to pay what it owed in connection with the operation of the Bowl-O-Mat Pueblo center?

A. Yes, we asked National Bowl-O-Mat in Pueblo to pay—

Q. And it did pay, didn't it?

A. Yes.

Q. After three years time while it was competing with Belmont as a bowling center in Pueblo, all you got out of Belmont was one thousand—what was it, 68 dollars?

A. Yes.

[4091]

Q. That's equal-handed application of policy to credit, is that what you call it, in Brunswick?

A. Each case is—has different circumstances.

Q. In one case one man pays, and in another case he doesn't; is that what you mean?

You said each case was different.

A. That's true.

Q. Some pay, and some don't pay?

A. Yes.

Q. Some get credit, and some don't?

A. That's true.

Q. No necessary correlation between whether they pay and get credit, and they don't pay and get credit; is that right?

A. Yes, there is a correlation.

Q. Why was Belmont permitted to go three years paying only $1,000, if you know?

A. I don't know.

Q. What policy was applied to Belmont in extending that much credit to it for that long a period, if you know?

A. I am sure the same one, but I don't know.

Q. You don't know what it was?

A. I know the policy, but I don't know the circumstances.

[4092]

Q. Policy is equal-handed, isn't that what's written on the wall?

A. That's true.

• • •

[4102]

RE-DIRECT EXAMINATION.

By Mr. Seeley:

Q. Mr. Rice, I believe that you and Mr. Hoffmann agreed on roughly on the amount of $250,000 as the amount which Brunswick received payments on equipment at Fort Lauderdale; is that right?

A. I think so, yes.

Q. Can you tell me how much of that was received from Fort Lauderdale Bowl-O-Mat and how much was received from the previous owner of the equipment?

A. Yes, sir. Fort Lauderdale paid $15,000 on the lane contract—

The Court: On what?

The Witness: On the lane contract from April to November, and $18,000 so that would be—

[4103]

from October 1961 to April 1962, that's 33,000, and they paid—

The Court: 18,000 on the pinsetters or lanes?

The Witness: No, that was after refinancing they paid so much, and they paid 21,000 and 25,000, so they paid 46,000 on the pinsetter account, so 46 and 30, was that other figure—

The Court: 33.

The Witness: 77,000.

Q. Does that include both principal and interest?

A. Yes.

Q. Was the period of time during which you testified that Belmont Lanes didn't pay anything to Brunswick any

longer than the period of time during which Fort Lauderdale Bowl-O-Mat didn't pay anything to Brunswick?

A. Fort Lauderdale didn't pay anything to Brunswick from April 1962—they didn't pay anything from 1962 to 1962—they abandoned the center in 1964, in December of 1964.

Q. Was Mr. Cobian in San Juan, to your knowledge, refuted to be a man of considerable means?

A. Yes, sir.

Q. And to your knowledge, was the bowling center

[4104]

of Rio de Piedras Corporation, was that a business large, or small, or no means?

A. The bowling alleys?

Q. The corporation.

A. The corporation, we sold our contract, was to Rafael Ramos Cobian. His company, I don't know what the capitalization was in the company.

Q. As a credit man, to whom would you rather sell equipment on time payments, to a wealthy man or to a penniless corporation?

A. Obviously, to a wealthy man.

Q. What percentage of your contracts did you say are with corporations?

A. Over 60 percent.

Q. You don't know any corporations that drive sports cars or send grandchildren to college, do you?

A. No.

Mr. Seeley: Thanks for the chuckle. It was a weak joke. I appreciate it.

Mr. Hoffmann: I knew a few.

Q. Mr. Rice, suppose that Brunswick had a customer with whom it had business dealings over a period of quite a few years, some very large, like equipment contracts, others much smaller, like purchases of supplies on open accounts, and suppose that

[4105]

Brunswick came to the conclusion that on their open account dealings with this customer they had had so many arguments with him and had spent so much time trying to settle the amount that he owed, that it just wasn't worthwhile their carrying them on credit any longer.

In your opinion as a credit man, would it be in accordance with Brunswick's policy at that point to put such a man on c.o.d.?

Mr. Hoffmann: I object to the question.

The Court: Why?

Mr. Hoffmann: The evidence doesn't show that that's the situation here.

Mr. Seeley: There is a letter in evidence——

Mr. Hoffmann: Yes, there is.

The Court: Overruled.
Do you understand the question?

The Witness: Yes.

A. If the account wasn't profitable, we'd put him on c.o.d.

Q. Now, in Pueblo, Colorado, Mr. Rice, Pueblo Bowl-O-Mat paid for its equipment, did it not?

A. Yes.

Q. And does it now have a bowling center?

[4106]

A. Yes, as far as I know.

Q. Belmont Lanes did not pay for its equipment, did it?

A. No.

Q. Does it have any bowling center?

A. No.

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[4110]

Mr. Seeley: If the Court please, yesterday we marked and introduced into evidence without any objection as Exhibit D-56.

The Court: Financial report of Treadway for '72, I believe.

Mr. Seeley: Yes. Two places in the report in which reference is made to the prior trial of this case. And I think by this time the jury knows that there was a prior trial, but there was one parenthetical statement which I believe should be stricken.

The Court: Page, please?
I believe the pages are numbered.

Mr. Seeley: It appears on the last page of the President's letter, which is at the beginning, the page which bears Mr. Lieblich's signature.

The Court: Yes, outlook for the current year, left-hand margin, at the bottom of the letter.

Mr. Seeley: Yes. And at the top, "Antitrust law suit."

The Court: Yes.

[4111]

Mr. Seeley: Now, in that discussion, is this statement——

The Court: Where?

Mr. Seeley: The top paragraph on the page.

The Court: "We are still awaiting a date of trial"?

Mr. Seeley: Yes. Go on down to the bottom. It says, "In March and April when our case was tried for the first time the jury was unable to reach the unanimous verdict required in the Federal Courts (it was reported later that the vote was 11 to 1 in our favor)."

I believe I should be given permission to black that out, because it is obviously highly prejudicial and it is hearsay on its face.

Mr. Hoffman: Your Honor, I find this passing strange. This is Brunswick's exhibit. They introduced it, we did not. They introduced it without limitation. It became evidence in this case. Now, when they have taken the trouble to read their own exhibit, they find out it is embarrassing to them. I submit that it either be withdrawn in its entirety or left in its entirety.

The Court: Technically speaking, a verdict

[4112]

is never rendered that way, at least in this jurisdiction. I can't speak for any other jurisdiction. We have never permitted any numerical decision to be given by a jury—eight to four, or nine to three, or eleven to one; I am not too sure that isn't even hearsay on Mr. Lieblich's part.

And I think the record should note that one of the jurors walked into the Clerk's office and blurted this out before she—it was a woman, incidentally, who signed the voucher, and she said to the Clerk in the office, "We tried this matter"—the Clerk said, "We are not interested in that. Please don't discuss that." And she insisted and said, "I am going to tell you, anyway. It was 11 to 1."

I don't think it is fair to leave it there.

• • •

[4120]

The Court: Members of the jury, during your absence it was stipulated among the parties that the bankruptcy sale of American International Bowling Corporation took place on March 26, 1965, and was approved January 27, 1966. Stipulated by counsel to all parties.

So stipulated, Mr. Seeley?

Mr. Seeley: Yes, sir.

The Court: Mr. Hoffmann?

Mr. Hoffmann: Yes, sir.

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[4123]

JOHN L. HANIGAN, called as a witness on behalf of the defendant, having been sworn, testified as follows:

[4124]

DIRECT EXAMINATION.

By Mr. Seeley:

Q. Where do you live, Mr. Hanigan?

A. Glencoe, Illinois.

Q. What is your business or occupation?

A. I am chairman of the board of the Brunswick Corporation.

Q. Where were you born, sir?

A. New York City.

Q. Where did you spend your boyhood and school days?

A. In New York City.

Q. Did you have any higher education after high school?

A. Yes, I went to Stevens Institute of Technology in Hoboken, New Jersey.

Q. Did you graduate from there?

A. No, I did not.

Q. You left there and then did you go to work?

A. I did. I went to work for R. H. Macy and Company in New York in 1933. That was the only job I could get.

Q. Will you please, sir, trace your work experience from that time down to the time when you came to Brunswick Corporation?

A. I spent two years at Macy's, and then two years,

[4125]

'35 to '37, in the Army, helping run a CCC camp.

From '37 until '62 I was with the Corning Glass Works in Corning, New York, starting in 1937 as a pipefitter's helper, which I did for a year, continuing as doing boy's work in the bowling room of the Glass Works. Boy's work is not what it sounds like. Some of the boys are 60-odd years old.

I then became a foreman and eventually department manager, then a plant manager, then a manager of five plants, general manager of the largest division in the company.

[4126]

Q. And when did you join Brunswick Corporation?

A. Well, I went from Corning Glass to Dow Corning Corporation as executive vice president and general manager in September of 1962. I then joined Brunswick in December of 1963 as president.

Q. As president of the Brunswick Corporation, the duties of which post you assumed in December 1963, what was the scope of your responsibilities?

A. It was my responsibility to operate the company.

Q. What familiarity did you have with Brunswick's business prior to becoming its president?

A. Only what I could gather from its annual reports and reading about it in the press. And, of course, I investigated by talking with some of the directors and officers of the company before I joined the company.

Q. And when you began your duties as president of Brunswick Corporation, how did you go about determining the condition of the company, and what matters required your attention, and so forth?

A. Well, the first thing, of course, was to try to identify what the problems of the corporation were. I knew, even before I joined it, that it was not in good shape. And I wanted to find out exactly what its problems were and what the possible solutions

[4127]

were.

In order to do this I visited all of the plants that the corporation had and talked with the division managements and rather quickly identified the fact that the major problem that the company had was that it had to collect the bowling receivables which were owed to it.

Q. Did you have meetings with executives of the bowling division about that problem?

A. I had meetings with not only the executives of the bowling division, but also the credit department, the treasury people and others concerned, on the basis of approximately twice a week through the—January through perhaps June of 1964.

Q. And will you go into more detail, please, about what you said you identified as the major problem?

A. Well, the major problem was, in December of 1964, in looking at the financial figures of the corporation, it was quite apparent that we owed a lot of money. We owed some $300 million to 18 banks and two insurance companies. Excuse me. We owed that to three entities—18 banks, two insurance companies and the CIT Corporation.

The wherewithal to pay these debts was contained not in the operating profits of the company, but in the

[4128]

receivables that were owed to us by others, which at that time were in the neighborhood of somewhere between four and five hundred million dollars.

Q. What were the nature of those receivables?

A. They were principally installment notes for anywhere from one year to eight years for bowling equipment which had been sold by the corporation to bowling proprietors throughout the United States.

Q. What, if anything, did you find out about the condition of those receivables?

A. Well, I found out some things about the condition of the receivables, but, more than that, about the condition of the bowling industry as such.

At that time there were bowling proprietors who, either through lack of financing, or lack of management

skills, or for other reasons, or because they didn't want to, were not paying us what they owed us. This, in essence, was the principal problem facing the corporation, the lack of payment of these receivables by bowling proprietors.

Now, that is not to say that 90 per cent of them were not honestly paying their debts and doing it on time. But the other 10 per cent were a threat to the whole receivable portfolio, because, as some of them did not pay us, other people were put at an unfair

[4129]

disadvantage with those who were not paying.

So that in order to be fair to everybody we had to treat everyone alike and expect people to pay. To put it simply, if proprietor A did not pay us and proprietor B did, proprietor A would have an unfair competitive advantage over proprietor B.

Q. In your judgment at that time what, if any, effect did this situation have upon the financial position of Brunswick Corporation as a whole?

A. We were in trouble. If we did not collect these receivables, it was evident to me that the corporation faced bankruptcy. My principal job, of course, was to protect the interests of the stockholders and also the employees of the company.

Q. How many stockholders approximately did Brunswick have?

A. Somewhere around 120,000.

Q. Do you know about how many employees it had?

A. In the neighborhood of 15 to 20 thousand. I don't recall exactly at that time.

Q. In the course of these approximately twice weekly meetings which you had, were there any discussion of what might be done about the situation you have described?

[4130]

A. Yes, indeed.

Q. State, as best you can recall them, as fully as you can recall them now, what various alternatives were discussed at those meetings?

Mr. Hoffmann: Your Honor, I think greater specificity is called for. I think we should learn when the meetings took place, who were present when these alternatives were considered, and try to get them located in space and time.

The Court: Try to be specific, Mr. Hanigan.

Q. Where did these meetings take place, Mr. Hanigan?

A. They took place at what at that time was the headquarters of Brunswick Corporation, 623 South Wabash Avenue in Chicago, Illinois.

Q. And will you name as many as you can of the people whom you met on those occasions?

A. Well, that was nine and a half years ago—nine years ago, but I know that Mr. Jacobson was there, Mr. Rudo was there, Mr. Bremer, Mr. Abernathy, Mr. Cahill, who was the treasurer of the company at that time. I can't recall the others.

The Court: Fix the approximate date of the first meeting, if you can recall.

The Witness: Well, they took place at

[4131]

regular intervals through the first half of 1964.

The Court: The first half of 1964.

The Witness: Yes, sir.

The Court: Thank you.

[4132]

Q. If you please, getting back to my question, state your recollection of the possible courses of action which were considered and discussed at those meetings?

A. Well, there were some courses which were contemplated. One was to simply do what a lot of proprietors were suggesting, which was to let them operate bowling equipment which we had sold to them without collecting anything for it and permit them to pay us at some time in the future if they were able to do so.

Had we, as a business proposition, acceded to this request, it would have been unfair to the people who were paying us on a regular basis, because it would have given the people who were making the request an unfair competitive advantage.

But from our standpoint, it also probably would have resulted in other people then stopping paying us because they were at such a disadvantage.

And consequently, the whole receivable portfolio eventually would have gone down the drain, and we would not have been paid, and we would not have been able to pay our debts.

So we rejected that alternative.

Q. What other alternatives were considered?

A. We also considered the possibility of operating

[4133]

some of the houses that were going bankrupt for our own account.

The problem here was that we—and we had long arguments about this—that it had never been done before in exactly that form, and some of the people who still, at the end of 1963, thought that there was only a lull in the bowling business argued against it.

But it had been suggested to me really by bowling proprietors who were delinquent in their accounts. Their cry was, what good will this equipment do you if repossess it and take it out and put it in the warehouse?

This will only cost you money, and it will cost you money to store it.

And that argument was perfectly true.

My job was to make sure that I protected the interests of the stockholders of the corporation, and putting perfectly good equipment in a warehouse was not doing that in my view.

So the decision was eventually made that the real way to protect the shareholders of the corporation was to, A, try and get everyone that we could to pay us what they owed; B, if we could not do that through fair means of being even-handed with everyone in the business, that we then ought to repossess the bowling equipment that we had sold, and if we could operate it,

[4134]

operate it in order for it to produce cash which was our need.

We were not at that time as much interested in profits as we were in survival.

But it would produce cash for us with which to pay our bills.

The decision to go that way was taken sometime around the middle of 1964.

Q. Who made the decision?

A. I did.

Q. Now, was any consideration given to meeting this situation by selling the repossessed equipment?

A. Oh, yes. That had been the plan through 1963, and a rather elaborate sales campaign was put on in 1963 to sell the equipment.

This was another very dangerous method, because as these sales were—we were attempting to make these sales, some of these sales groups had reduced the price of the used equipment to a point where it would have paid a proprietor to not pay us and then buy back the equipment at a lower price than he had agreed to buy it in the first place.

This was another way in which we would have put in danger the money that was owed to the corporation and I could not do that and do my job.

[4135]

Q. Now, in addition to deciding that Brunswick under some circumstances would try to operate bowling centers with repossessed equipment, did you make plans and give directions to implement that?

A. Yes, I did.

In the middle of 1964 I directed that we set up a bowling center operating division, and eventually charged Mr. Rudo with its responsibility, relieving him of his responsibilities for selling the equipment, and separating it as a separate division of the company.

Q. Now, you said that efforts would be made——

A. That's Mr. Milton Rudo.

Q. Efforts would be made to collect your receivables on an even-handed basis.

To what part of the company was responsibility for trying to do that delegated?

A. To the Credit Department.

Q. BCOD have anything to do with collections or attempts to collect?

A. No.

Q. What department decided when collection efforts were futile and repossession was necessary?

A. The Credit Department.

Q. Did BCOD have anything to do with that?

[4136]

A. No.

Q. When did BCOD get into the picture?

A. Well, if the Credit Department, after having talked with the people who owed us some money, the proprietors who were delinquent, and after exhausting every means to get them to pay us and help them to pay us, decided that it was a hopeless situation, and they either could not or would not, the whole file was then turned over to the Legal Department for action.

The Legal Department then instituted repossession, legal business—I don't know exactly what you call it, but they instituted the motions to repossess the equipment, and at the same time the Sales Department which had nothing to do with BCOD, attempted to sell the equipment in place to someone other than the person from whom it had been repossessed.

This was done at a price which we had decided upon in the middle of 1964, and if at that time we could sell it to someone else, we certainly did.

At the same time, if the Sales Department could not sell, and did not appear to have any prospects, it was then evaluated by the BCOD people to see if they thought it could be salvaged.

If they thought it could, they would make a pro-

[4137]

posal to operate it, and in those days this had to be approved by Mr. Rudo, and he very often talked it over with me, but essentially the responsibility was his to decide whether he could salvage a bowling establishment or not.

If he decided he could, he opened it up and ran it.

Hopefully, the cash flow would be positive even though the profitability was not.

Q. Did you give Mr. Milton Rudo any instructions or guidelines as to what his financial objectives should be in operating these centers?

A. Yes, I did.

I rather put him in a box. I told him that he—it was his job to salvage as much cash from the repossessed bowling equipment as he could, but at the same time, it was also his job to put it on a profitable basis.

And these two things were sometimes mutually exclusive.

Q. What do you mean by the term, "salvage"?

A. Well, what I was trying to do was salvage the company. In order to do that, we had to salvage the value that was in bowling equipment.

To simply repossess it and put it in a warehouse

[4138]

was to make it—to sort of sterilize it as far as generating cash was concerned.

My objective was to generate cash from this bowling equipment and eventually profits so that we could get back on the basis where we could breathe with our creditors.

Q. Was any policy adopted at the same time BCOD was formed as to the possibility of selling any of the centers which it operated?

A. Yes. All of the centers which BCOD operated from the very beginning were for sale, and still are.

We haven't been too successful in selling them, however.

Q. Do you have any opinion as to why you have not been successful?

A. Yes. I think that the bowling business as a business, unfairly, in my opinion, doesn't have a very good reputation as a money making business. People have long memories, and they remember the fact that a lot of people did lose money in the business in the late 50's and early 60's, particularly early 60's.

Q. Keep your voice up so that the jury doesn't have to strain to hear you.

A. Excuse me.

It is for this reason that even today people hesitate

[4139]

to invest in retail bowling business.

We have found it to be a very good business.

Q. To what extent has the bowling centers operating activities succeeded in accomplishing its mission or purpose as you have described it?

A. It succeeded very well. At the same time it is producing a substantial pre-tax profit, and generating cash, and it has generated cash since, oh, about 1967, as I recall it, and it is, it has gone into the black in 1969, and it has been in the black ever since.

It grows substantially each year, more or less with the population in the areas where we operate, and while I think some of our competitors feel that we are too easy in being competitors, we like the business.

Q. Mr. Hanigan, was it any part of the purpose or objective of Brunswick Corporation in deciding to operate some bowling centers to exclude competing bowling centers from the business?

A. Absolutely not.

Q. Was it any part of the objective or purpose to gain a position in the industry where you could set prices for bowling?

A. Absolutely not.

This would be silly. We only had at the most

[4140]

two or three percent of the total.

Mr. Hoffmann: I move that the last part of the answer be stricken as not responsive.

The Court: Why not, Mr. Seeley?

Mr. Seeley: Your Honor, I didn't even hear it.

The Court: He said they only enjoyed three percent of the business, or words to that effect.

I will order it stricken, and the jury is instructed to ignore it.

You can pursue it if you care to.

Q. Approximately what percentage of the bowling centers in the country does Brunswick operate?

A. We have about 170 out of approximately 9,000, which is a small percent.

Q. Was it ever the purpose or policy of Brunswick Corporation to discriminate in its credit treatment among its customers for the purpose of favoring some and injuring others of its customers?

A. No. Our purpose in working with our customers was to collect the money that was owed to us.

We had to do that in order to survive ourselves.

The instructions which I gave the Credit Department were—was that they should be fair with everybody and

[4141]

try and help the customers in any way that they could so that we would get paid.

This was the principal thrust of the Credit Department's work.

Q. Was it ever a purpose or policy or a decision or an intention of Brunswick Corporation to cause Bowl-O-Mat centers to default in their obligations so that Brunswick could take over those centers?

A. Absolutely not.

Q. Now, Mr. Hanigan, has Brunswick built and opened some new bowling centers?

A. Yes, sir.

Q. What is its purpose in doing it?

A. Well, so far as the bowling part of our business is concerned, our purpose is to make and sell bowling equipment.

We are constantly trying to do that with other people.

In pursuing this aim, we have some people who go around the country looking for places that look good to us for opening a new bowling center.

[4142]

Q. You mean Brunswick people working for Brunswick?

A. Brunswick people working for Brunswick go around the country and try and figure out which will be a good place to put a bowling center, where the economic conditions are right and the growth conditions in the area and that sort of thing.

When we find such a place we try and interest bowling proprietors or investors or other people in putting in a bowling center and buying the equipment from us.

If we cannot find anybody, we then draw up plans to go ahead and acquire property to put in a bowling center ourselves.

At this point we are perfectly willing to sell it to anybody for a price that will get us out whole plus 15 per cent for our overhead and time and that sort of thing.

At this point it is simply another device to interest people in getting into the bowling business.

Failing to find anyone to buy our equipment and put up a bowling establishment, we do it ourselves. At this point it is not for sale for one year, until we establish the cash flow and the profit potential of the area.

[4143]

At this time it is then offered for sale as a going business, and naturally, at a higher price than the equipment price.

We think this is good business for us in that it is a new way of selling bowling equipment. It also gives the investor some assurance that what he hopes will happen there is in fact happening so that he can invest his money with more assurance that he has a viable business than he could if he just bought the thing and started the business himself.

Q. What are Brunswick's present plans or expectations as to how many of these new centers it will build in the United States?

A. Oh, we will build three, four, five a year, something like that.

We hope we don't build any——

Q. Sir?

A. We hope we will not build any, if we can sell the equipment in all of the good places, we won't build any——

Mr. Hoffmann: I ask that the latter part be stricken. It is also not responsive.

The Court: So ordered.

You expect to build three or four a year. All right.

[4144]

Q. Would that expectation be changed if you found that you were able to sell the sites and equipment to someone else?

A. Yes, sir.

Q. Now, does Brunswick also through BCOD manage any bowling centers?

A. Yes, we do.

Q. What is the purpose of that?

A. People come to us who have grown older, a lot of these people started bowling establishments even before the bowling boom in the '50's, and they have reached the age where they'd like to take it easy.

They come to us and say, "We'd like you to manage the center for us."

In that case we try and work out an arrangement where we can do it and they can be assured of some income from it.

Q. In its operation of bowling centers through BCO does Brunswick have any intent or purpose to injure competitors in any way?

A. No.

Q. Now, you say that some of the BCO centers did show losses at certain times; is that right?

A. Yes.

Q. Now, were those losses incurred for the

[4145]

purpose of weakening and excluding competition in the markets where those centers were operated?

A. Absolutely not.

Q. What is the policy of the company with respect to continuing the operation of a center which fails to produce a cash flow?

A. Well, as I said before, my instructions to Mr. Rudo was that he should salvage as much of the repossessed equipment through operation or sale as he could, to make money. He in his judgment decided when he thought a bowling center could be made into a viable entity and when it could not.

And if he decided that it could not, he closed it down.

If he thought that it could, he permitted it to be operated until either he proved to be right or proved to his own satisfaction that he was wrong and shut it down.

Mr. Seeley: You may cross-examine.

CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Hanigan, do I understand correctly from your direct testimony that when you refer to "salvaging a bowling center" you are not referring to salvaging the center as such, but you are referring to salvaging the

[4146]

business of Brunswick; is that your testimony?

A. I am referring to salvaging the business of Brunswick, of course, but I am also referring to salvaging the value of the equipment which is owed to us.

Q. Well, Mr. Seeley asked you a specific question. It was, what do you mean by salvaging?

And you answered it specifically, did you not?

And your answer was, you meant by salvage, the company, the Brunswick company.

Wasn't that so, you were salvaging the Brunswick company?

A. Yes.

Q. Now, in salvaging the Brunswick Company, you were confronted in 1964 with a large number of outstanding machines; is that right?

A. Yes.

Q. And there were several courses of conduct open to you. One was to repossess the equipment and put them into warehouses, that is to say, the lanes and pinsetters; is that right?

A. Yes.

Q. That was done, wasn't it, in many instances?

A. Yes.

Q. Do you have any idea in how many instances?

A. Oh, we think eventually ended up with some

[4147]

6,000 pinsetters.

Q. In warehouses?

A. Yes.

Q. Those were pinsetters which had been sold on conditional bills of sale to bowling proprietors; is that right?

A. They were pinsetters that had been sold to proprietors. I don't know what a conditional bill of sale is.

Q. You have got a right to get them back if the proprietor didn't pay; isn't that right?

A. Yes.

Q. And you took them back, 6,000 of them. Was that a way of salvaging the Brunswick company?

A. No, sir.

Q. Well, tell me, sir, what happened to the 6,000? If you know.

A. Eventually in the years between the time that they were repossessed and now, we have rehabilitated them, in many cases upgraded them to a new and faster machine, and resold them as used equipment.

Q. You haven't been stuck with very many that were scrapped, have you?

A. Yes, quite a few.

I don't recall how many, but quite a few we had

[4148]

to scrap.

Q. Now, when you sold a pinsetter to a bowling proprietor, if you got back the manufacturing cost and then sold the pinsetter again when it was rehabilitated, you made a profit, didn't you?

Isn't that what we mean by a "profit"?

A. No, we did not make a profit at that point. Very often we had a loss, still, but the point is that an asset of the company when I went there was the receivable, and that had disappeared when we repossessed the equipment.

Q. You say you had a loss in—when you say you had a loss in many instances, I ask you to pause over that.

You sold the machine, let's say the pinsetter, once, first time around.

You got a down payment, didn't you?

A. Sometimes.

Q. It was your choice, you didn't sell it without a down payment unless you wanted to?

A. In some instances that is true, we did not get a down payment.

Q. Were there very numerous instances?

A. Not numerous, but some.

Q. A few?

[4149]

A. Yes.

Q. Out of many thousands of pinsetters; is that right?

A. The down payments were minimal in other cases.

Q. You got a down payment, did you not?

A. Yes.

Q. Except in a few instances?

A. Yes.

Q. And then, sir, in many situations you got further payments on the installment contracts, didn't you, from the persons who bought?

A. In most cases we did.

Q. Yes.

So now you have some money back. Could be that money is less than manufacturer's cost, could be that money exceeds manufacturer's cost; isn't that right?

A. I don't see where that's—that has any bearing.

Mr. Hoffmann: Your Honor, the witness' remark I ask to be stricken.

The Court: So ordered, and the jury will be so instructed to ignore it.

Q. Now, sir, are you going to answer my question: You do, don't you, sometimes get back more than the manufacturer's cost before you repossess the machine?

[4150]

A. Sure.

Q. Do you have any idea just in the aggregate in how many instances you got back manufacturer's cost before you repossessed?

A. What's your definition of "manufacturing cost"?

Q. What the cost was to make and sell the product.

A. I would—I don't know in how many instances we got back our manufacturing cost.

Q. Maybe I can help you with this. We have had testimony in this proceeding that the manufacturing cost

per pinsetter in that period of time was about $2200, there were some variations in the testimony over a span of a couple of hundred dollars——

The Court: Just a minute. Don't answer.

Mr. Seeley: The testimony, as I remember it, as to manufacturing cost did not include selling cost, as Mr. Hoffmann has included in his question.

The Court: Mr. Hoffmann?

Mr. Hoffmann: Your Honor, that's my recollection of the testimony, that it included——

The Court: Give him a hypothetical.

Q. Suppose it cost $2200 to make and sell the product.

[4151]

Do you have any idea of whether or not the 8,000 machines which you say you repossessed produced a revenue which would be reflected by multiplying 8,000 by $2200?

A. I do not.

Q. You don't know one way or the other.

And do you know the answer to that question if we consider not only the first sale and repossession, but a second sale of the same equipment, even though the equipment may have been in some way rehabilitated?

A. What's the question?

Q. Do you understand my question?

A. No, I don't.

(Record read.)

A. No, I don't.

Q. You don't know?

A. No.

Q. Now, sir, I put it to you that the bowling operation business is a good business.

A. Correct.

Q. Do you agree?

A. Yes.

Q. You have how many thousands of employees devoted to the bowling operation business in the United States?

[4152]

A. I don't know exactly, but I would guess five thousand.

Q. That's to the operation, we're not talking now about the manufacture, sale of products?

A. That's right.

Q. You have about five thousand devoted to operating bowling centers primarily; is that right?

A. That's a pure guess.

The Court: He said it is a guess, Mr. Hoffmann.

Q. You have about 170 centers that you operate?

A. Yes.

Q. Do you know how many centers you have sold over the years, operating centers?

A. I don't know, I would guess again, six, seven, eight, something like that.

Q. Do you know how many you sold between the years 1965 and 1970?

A. No, sir.

Q. Well, you did know in 1970, didn't you?

A. This is 1973.

Q. You have forgotten.

May I refresh you by suggesting that there were two that were sold in that five-year period.

A. If that's what I said, that's what it was.

[4153]

Q. You said it also, didn't you, in 1972, in a newsletter; do you recall that?

A. No, I don't.

Q. May I read a brief sentence:

"The company has resold six retail bowling centers since 1965, of which four were sold in 1971."

I took away from six and concluded that only two were sold between 1965 and the beginning of 1971; is that right?

The Court: You have to answer.

A. Yes.

Q. And then in 1971 you sold four; isn't that right?

A. According to that letter it is. I don't recall.

Q. You have no reason to suppose that this letter is inaccurate, do you?

A. No, I do not.

Q. Indeed, if I may show it to you, it is attached to a letter of yours to the stockholders, is it not?

A. Yes.

Q. Do you know how many, if any—

A. I can't hear you.

Q. Do you know how many, if any, Brunswick operated centers have been sold since 1971?

[4154]

A. I do not.

Q. Do you know whether any has been sold?

A. I believe they have, yes.

Q. Do you believe as many as one or two?

A. Yes.

Q. More than that?

A. I don't think so.

Q. Now, sir, in answer to a question put to you by Mr. Seeley you suggested that the reason why more had not been sold was because the bowling industry had long memories; is that right?

A. Investors have long memories.

Q. That is investors in the bowling industry?

A. Investors in general have long memories.

Q. And the long memory includes a bowling operating depression, does it not?

A. It includes the memory of many people not making money in the bowling industry.

Q. And do you recall about when the bad years began in bowling, that is to say, in the recent decade?

A. Well, they had begun when I came to the company, and my information is that they had begun in the previous year, 1962.

[4155]

Q. About 1962, is that what you are saying?

A. Yes.

Q. Did there come a time when this bleak period—if I may call it that—came to an end?

A. So far as the retail operations are concerned, I don't think there ever was any bleak period, except for people who were under-financed or under-managed. Most people in the business were making money.

Q. Right along, from '62 to 1972?

A. That's my information; yes, sir.

Q. How about Brunswick, when it was operating bowling centers during that period, during most of that period was Brunswick making money?

A. Having taken over bankrupt places, of course not.

Q. Well, sir——

A. However, these bowling centers did start to do some cash in 1967, which was our principal concern at the time.

Q. Do you know whether or not they started to produce profits for the company beyond a positive cash flow?

A. In 1969 they did.

Q. And before that you had been operating on a non-profit or loss basis starting in December of 1964, is that right?

[4156]

A. That's correct.

Q. That was when you first acquired a bowling center, '64.

A. That is correct.

Q. '64, '65, '66, '67, '68 and then in '69 it turned; is that your testimony?

A. Yes, sir.

Q. Do you think the business was good for other proprietors in the industry, as a general rule, on the average during that period, 1962 to 1969?

A. 90 percent of those who owed us money paid us on time. And judging by that, I would say it was good.

Q. How did you run all these accounts receivable which threatened to put the Brunswick Corporation into bankruptcy, according to your direct testimony, how did that come to pass?

A. If we had taken some of the other paths which we might have, foolishly, it would have, in essence uncovered the receivables which we did collect, by being unfair to the people who were paying us.

Q. You spoke of there being an urgent problem when you came to Brunswick, isn't that so?

A. Yes, sir.

Q. And did I understand you correctly to say

[4157]

that that urgent problem was the amount of the outstanding receivables?

A. Yes, sir.

Q. And weren't these receivables mostly——

A. Excuse me.

Q. Please answer my question. Weren't these receivables——

A. Well, I would like to change my answer. It was not the outstanding receivables, it was the collection of them that was the problem.

Q. You mean that money was owing, unpaid, to Brunswick, but it was the collection of them that was the problem, is that right?

A. Yes, sir.

Q. That answer suggests that there came a point in time when you collected them, is that right?

A. Some we did, some we did not.

Q. Well, sir, if Brunswick was in the edge of bankruptcy, if that is the meaning of your testimony, was it because of outstanding receivables owing to Brunswick through the operation of bowling centers?

A. It was due to the fact that some of the people either would not or could not pay us, and they, by—if we had let them not pay us, this would have threatened the rest of the receivables and would have

[4158]

threatened the viability of the company.

Q. And so, to solve this problem, you said, "Let's go out and collect," is that right, collect on a fair, non-discriminatory basis?

A. That is correct.

Q. And then you handed it over to the Credit Department for that purpose; wasn't that your testimony?

A. That is correct.

Q. Do you have any idea as to whether or not the Credit Department applied your policy of collecting on——

A. I believe they did.

Q. I hadn't finished my question. —of collecting on a non-discriminatory basis?

A. I believe they did; yes, sir.

Q. You believe it. Do you know it?

A. They reported to me what they were doing and I considered what they were doing to be in direct obedience to my instructions.

Q. Did they report to you, sir, what they were doing in Pueblo, Colorado, about collecting receivables?

A. Of course not.

Q. Well, you say, of course not; what do you mean by, "of course not," why not?

[4159]

A. They did not report in detail on every case. We had too many of them.

Q. Well, if they didn't report in detail on every case, how did you know that your policy was carried out in every case?

A. I don't, of my own knowledge.

Q. You don't know that?

A. However, I have great confidence in Mr. Abernathy, and he told me that they were doing it according to instructions.

Q. And if I suggested to you that Mr. Abernathy's testimony, in effect, was that he didn't know whether it was being carried out in every case, who would I look to, to find out?

A. The individuals in the Credit Department who did the actual work.

Q. Do you know anything at all about handling of credit in Pueblo, Colorado?

A. No, sir.

Q. Have you been told that one center was carried by Brunswick for a period of about three years, having paid only $1,068, was that told to you, sir?

A. No, sir.

Q. Whereas other centers had paid many thousands of dollars to Brunswick, was that told to

[4160]

you, sir?

A. Yes, sir.

Q. That was? Who told it to you?

A. Mr. Abernathy and Mr. Cahill.

Q. Didn't there come a time when Mr. Lieblich complained to you about that?

A. I don't recall.

Q. You don't recall meeting with Mr. Lieblich concerning the subject in Chicago?

A. No, sir.

Q. Were you informed about the situation in San Juan, Puerto Rico?

A. No, sir.

Q. Do you have any knowledge at all of how much money was owed by a bowling center called Star Bowl?

A. No, sir; I do not.

Q. You don't know anything about this. How about in the area of Fort Lauderdale, Florida, in that area, do you know anything about Brunswick's extension of credit there?

A. No, sir.

Q. But if your policies were carried out in these places, credit would have been extended fairly and in a non-discriminatory fashion to all Brunswick consumers, is that right?

[4161]

A. That is correct.

Q. Now, sir, do you have any way of knowing whether or not your policy of fairness was carried out by the people in the Credit Department?

A. Of my own knowledge?

Q. Yes, do you know?

A. No, I don't.

Q. Did you ask them every so often: Are you carrying out my policy?

A. Oh, yes.

Q. And what would they say, "Yes, sir"?

A. Yes.

Q. And then would you ask them for details about carrying it out?

A. No, sir.

Q. You just took their word for it?

A. Yes, sir.

Q. Why was it necessary to ask the question, if you are going to just take their word for it?

A. I wanted to be sure that we were going to collect this money. It was vital. The way to do that was do it on a fair basis with everybody.

Q. Do you ever remember sitting down with people in your Credit Department—Mr. Abernathy, perhaps—and saying to him: Make sure, Mr. Abernathy,

[4162]

that you don't discriminate between NBO and any purchasers of Brunswick pinsetters and lanes who are in competition with NBO?

A. I do not recall ever saying that.

Q. You never said that, did you, to them?

A. Not that I can recall.

Q. But your policy was that it should be done——

A. Yes, sir.

Q. I'm sorry. Please wait until I finish my question. —that it should be done in a non-discriminatory fashion?

A. Yes, sir.

Q. Do you know that old legal maxim, "The thoughts of men are not to be tried, only the devil knows the thoughts of man," have you ever heard that maxim?

A. No, sir.

Q. It was Rudo who decided to run the various bowling establishments, is that correct?

A. No, sir.

Q. That was a note I made. I didn't make an accurate note of your testimony?

A. It was I decided they were to be run. He decided how long they were to be run.

Q. You made the decision as to which ones would be run?

[4163]

A. No, no.

Q. The general decision that bowling centers would be operated by Brunswick?

A. Yes, sir.

Q. That was your decision?

A. Yes, sir.

Q. But the question as to whether or not particular bowling centers would be run by Brunswick, that was a decision for Mr. Milton Rudo, is that your testimony?

A. After attempts to sell the equipment had failed, it was his job to decide whether we would operate them or not.

• • •

[4164]

Q. Mr. Hanigan, once Brunswick acquired and operated a bowling center, was it Mr. Rudo's decision to decide whether it would subsequently be closed down?

A. Yes.

Q. Now, how about the matter of the sale of such center, a Brunswick owned and operated center, was Mr. Rudo to make the decision as to whether or not the center should be sold?

A. There is a break in continuity. At one time Mr. Rudo was in charge of just operating the centers. He is now in charge of bowling——

Q. Do you know about when that change took place?

A. I can't remember, but let me put it this way: When he was responsible for operating the bowling centers he and the bowling division with my concurrence set up a formula for pricing the centers and the bowling division apart from the BCO is responsible for selling them.

Q. Do you know what that formula is?

A. I don't.

Q. Is this a formula which is useful in the sense that somebody in BCO could say, what is the sale of a center formula. I can go out and sell a center, could

[4165]

it be used in that way?

A. It wasn't the BCO's job to sell it. It was bowling division's job to sell it.

Q. However, in doing the selling was there such a formula around so that if you have 50 salesmen they could all be armed with the formula and go out and try and sell a center?

A. Oh, I think not.

I think that if a salesman had a prospect for a center he would come or talk on the telephone and find out what the selling price was, the comptroller of the division would in all probability put together the numbers for Mr. Rudo and establish the price. That's when he was in charge of both groups.

Q. Whoever is in charge now, if I want to buy a center, how do I find out whether it is for sale?

A. If you were—if a salesman were to approach you, believing that you are a prospect, he would already have the price.

Q. Suppose he didn't approach me. There I am, hungry to own a Brunswick operated center, and I pick up the phone and I say, "Is this the Brunswick Corporation? I want to buy your center, Lodi."

What happens from then?

A. You get an answer back very quickly as to how

[4166]

much it was.

Q. Would some fixed formula that I would know about in advance or find out in advance be applied if you quote me a price?

A. No, you'd be quoted a price.

Q. But would I be quoted a price which was calculated by a Brunswick official in terms of applying some fixed formula?

A. Yes.

Q. You say such a formula exists?

A. Yes.

Q. But you don't know what it is; is that your testimony?

A. That's right.

Q. Do you know anybody in the Brunswick organization who knows what that formula is?

A. I think perhaps I know—I know that Mr. Curren would, the present comptroller of the division.

Q. Do you think that Mr. Rudo ought to know that formula?

A. Not necessarily. I think perhaps Mr. Bensinger, the marketing manager, would know it.

Q. Rudo was not in charge of this for quite a while?

A. Yes, he helped formulate the formula, but I doubt

[4167]

that he would remember what it is.

Q. If he used it often he would remember it, don't you think?

A. Not necessarily.

Q. If it is a formula applied, two times two, that's a formula.

You think Mr. Curren would know?

A. Yes.

Q. Can you name anybody else who would know?

A. I don't know.

Q. Surely you don't want for the Court and jury to believe that there is only one person in this vast organization that would know this formula which is applied to the sale of Brunswick operated centers?

A. I expect there are more. I don't know who they are.

Q. So if I asked you today to sell me a center, assuming you found me otherwise acceptable, where would you—how would you go about finding out how to quote me a center?

A. I'd get on the telephone and talk to Mr. Rudo, and he'd give me the answer.

Q. He'd have to talk to someone else?

A. Yes.

Q. He'd know who to talk to?

[4168]

A. Yes.

Q. Do you know whether there have been over the years lots and lots of Brunswick salesmen going through these United States up the alleyways into the small towns looking for the bankers, trying to sell these centers?

A. I don't know whether they follow that description, but the salesmen have been approaching other bowling proprietors and investors and some bankers.

Q. Would you say——

A. Trying to sell.

Q. Would you say vigorous efforts have been made to try to sell these centers over the years?

A. Yes.

Q. And your success was meager; is that it?

A. That's right.

Q. And this is true even though bowling is no longer in the depression, isn't that so, depression seems to be over, is it not?

A. I never said there was a depression.

Q. Bleak days?

A. That was your description.

Q. You didn't share it?

A. No.

Q. There have been no bad days at all starting

[4169]

in 1962?

A. There were for some people, not others.

How about for Brunswick?

A. Sir?

Q. Was there bad days for Brunswick in bowling?

A. Oh, yes.

Q. Were you at the edge of bankruptcy, is that what I was to understand from your direct testimony?

A. Yes.

Q. What year was that?

A. Well, I expect it was 1963 and forward. The earnings of the company started to recover in 1966, and in subsequent years did recover.

Much of this recovery was for divisions—due to divisions other than bowling.

Q. You came into Brunswick again, when?

A. In December 1963.

Q. And you were in Brunswick in 1964, 1965, 1966, and so forth?

A. Yes.

Q. As president of the company; is that right?

A. Yes.

Q. And in 1965 you went to San Juan, Puerto Rico, and explained to the bowling proprietors why it was that Brunswick was taking over centers; isn't that

[4170]

so?

A. Yes.

Q. And you called it a salvage operation, did you not?

A. Yes.

Q. Did you indicate it was a salvage of Brunswick and not of the proprietors when you made your remarks to San Juan?

A. It was a salvage of the equipment as well as of Brunswick.

Q. That is to say, of money that could be made from the equipment?

A. Yes.

Q. And now, Mr. Hanigan, were you at the edge of bankruptcy, was Brunswick at the edge of bankruptcy in 1965 when you went to San Juan, Puerto Rico?

A. We were very close to it.

As a matter of fact, in the fall of 1965 we had to set up reserves because it became apparent at that time that our balance sheet was overstated and it was necessary to set up these reserves to make it an accurate reflection of the real worth of the company.

When that happened we breached our covenants with the lenders and had to approach them to recon-

[4171]

stitute a loan for $190 million, which we were able to do on less favorable terms than we had had before that time, and if they had not gone along with us in the expectation that we would be able to collect our receivables in large part the company would have been bankrupt at that point.

Q. In 1965 you had money owing, did you, to CIT?

A. Yes.

Q. A sizeable amount, do you remember?

A. It was sizeable, yes.

Q. And then you got a new loan, 18 banks and insurance companies; is that right?

A. Yes.

Q. And then you paid off CIT?

A. Yes.

Q. No longer owed money to CIT?

A. That's correct. I don't remember what year we finished paying them off, I think it was 1968.

Q. What sort of loan are we talking about, how much?

How much was this loan from the 18 banks—

A. $190 million.

Q. In your experience do banks and insurance companies lend 119 million—

[4172]

A. 190 million.

Q. $190 million to bankrupts?

A. They had already loaned it.

Q. But you got a new one?

A. We got a new one because we gave them assurances that we were going to collect the money as we expected.

Q. You also paid off CIT. Do you remember how much?

A. I do not.

Q. But it was a very sizeable amount in the many millions of dollars, wasn't it?

A. Yes.

Q. You didn't default on your obligations to CIT?

A. No, sir.

Q. Did you default on your obligations to the banks?

A. We did in the sense that we had breached the covenants which described the loan.

Q. That's descriptive language, you didn't default in the sense of not paying them that money?

A. No, sir.

Q. Now, sir, in 1965, I read to you from the annual report in 1965. Brunswick—

The Court: Excuse me. Is it in evidence?

[4173]

Mr. Hoffmann: It is in evidence, your Honor, as defendant's Exhibit 30.

The Court: All right. I just wanted to set the exhibit on the record.

Mr. Hoffmann: Page 6.

Mr. Seeley: I didn't hear the number.

Mr. Hoffmann: Defendant's Exhibit 30.

Mr. Seeley: Thank you. What page?

Mr. Hoffmann: Page 6.

By Mr. Hoffmann:

Q. "Brunswick enjoys a substantial cash flow from collections on bowling installment notes receivable. In 1965 these collections more than covered the following uses and totalled $87,119,000."

And then the exhibit lists the uses that were covered by the collection: Payments on debt in 1965, CIT borrowings, $20,935,000, bank borrowings, $10,000,000, mortgages and others, $5,000,000-something, total payments $36,000,-000-something.

Interest paid on borrowings, $18,520,000, for a total of $54,624,000.

Now, when we take away all these payments, these payments on the borrowings, CIT, to the banks and the mortgages, from those bowling receivables, that is to say, when we take $54,000,000 and something from

[4174]

87 million and something, we have left a line of $32,495,-000 which shows collections available for other purposes.

Do you see that, Mr. Hanigan?

A. Yes, sir.

Q. Does that mean that the bowling receivables not only more than covered the bowling obligations, such as

the borrowing from CIT and the banks, but also left over $32 million for other company uses?

A. That's right.

Q. And indeed, the report says that the remaining $32 million—I have turned the page to page 7—495,000 dollars when combined with funds generated from other sources was sufficient to finance the company's additions to fixed assets, to pay state, local and federal income taxes, to meet general operating needs, and also to produce a net increase of $9,879,000 in cash and marketable securities at the end of 1965 compared to December 1964, and so forth.

In March 1966 Brunswick of Canada, Ltd., paid $6 million long-term loans, leaving a balance of $11 million, and so forth.

Is this a picture of a failing business, a bankrupt business?

A. It would have been if we hadn't changed our stance in 1964.

[4175]

Q. And the change of stance was what; what did you change from and to?

A. We changed from prices which were not firm, from credit which was not firm, and we started to operate bowling centers, all of which were in the direction of collecting the receivables that were owed to us.

If we had not collected that $87,000,000, the banks would not, would have not have extended their loans and we would have been bankrupt.

Q. You did not become bankrupt?

A. We did not.

Q. Th banks did extend your loans and your receivables from bowling operations exceeded your expenses; isn't that correct?

A. That's right.

Q. Something like a lawyer saying, I have got an awful lot of law business, but if I don't collect my fees, I might go broke; is that more or less the position of Brunswick?

A. No.

Q. The receivables, if they weren't collected, that's what you were worried about?

A. If we had not taken action in 1964 in my opinion, we would have been bankrupt in 1965.

Q. And the action you took again was to go

[4176]

into the bowling business; that was one thing; wasn't it?

A. That was one thing.

Q. And the other thing was to firm up prices; is that right?

A. Yes.

Q. And to collect, decision was made to get everyone to pay and to use even-handed means in credit; is that right?

A. That's right.

Q. Now, you don't know, except that you have made such a policy, you don't know whether or not in particular situations about situations that that policy of even-handed credit was applied in practice; isn't that also so?

A. I have every confidence it was.

Q. You have the confidence, but you don't have the knowledge; isn't that correct?

A. That's right.

Q. Now, didn't there come a time, Mr. Hanigan, when you decided that bowling, if you will forgive me, was one hell of a good business?

A. Yes, I did, it is.

Q. And that is true for the good bowling proprietor, isn't it?

A. Yes, sir.

[4177]

Q. I read some remarks attributed to you on July 1, 1970, in a publication called, "The Investors Reader." It is, I think, widely circulated by Merrill, Lynch.

"Quiet spoken Jack Hanigan who wears metal framed glasses——"

A. I have changed.

Q. I was very troubled about the accuracy of the report.

"Says it is a comfort these days to have a solid balance sheet. 'We have cleaned it up. Our accounts receivable are in strong hands. For the good bowling proprietor, bowling is a hell of a good business.' "

Are you properly quoted there in this report?

A. I had an interview with a young lady and told her that.

Q. She seems to have reported you correctly?

A. Yes.

Q. This article also says, "To Jack Hanigan, a Brunswick business—" and now I quote, or rather I read her quote—"must have a technical advantage or be a major factor in the market or both."

Did you also say that?

A. Yes, sir.

[4178]

Q. You are properly quoted?

A. Yes.

Q. Tell me, if you can, whether or not the Brunswick operation of bowling centers today are such that Brunswick has in them a technical advantage?

A. No, sir, we do not.

Q. You do not.

Well, you have 5,000 people more or less devoting their energies to the operation of bowling centers within this country?

A. Yes.

Q. Did you make any provisions for paying out some unemployment benefits to them or putting them to work elsewhere in the organization in the event that tomorrow you sell off all of your 170 bowling centers?

A. We have benefits for all our employees.

Q. Wouldn't this be a disaster if tomorrow your 5,000 employees had to be taken care of because you went out of the bowling operating business?

A. Certainly would.

Q. You don't anticipate that that's going to happen; do you?

A. I do not.

Q. Indeed, you believe that Brunswick is in the bowling operating business to stay, don't you?

[4179]

A. If history continues, that's true.

Q. And reason to suppose that the history which you say, if it continues, is there any reason to suppose that history will not continue?

A. No. I think it will continue for a time.

It is possible that in the future investors will become more interested in the bowling business, as I think they should.

Q. Do you, before you build a new center, Mr. Hanigan, make sure you have a purchaser for it?

A. No, sir.

Q. You build it and throw—make it a hostage to fortune; is that what you do, just build it and hope that

some day sometime somebody might come along and buy it from you?

A. We are trying to develop the bowling business throughout the country to the point where it should be in our opinion and in that—to that end we try to seek out places where people do not have enough bowling lanes to bowl in, and we then try to sell somebody on putting bowling lanes in. If we cannot do that, we do it, and we do hope that at some future time we will sell it, but if we do not, we now know through our operation of bowling centers that this is a good business, and it is not such a hostage to fortune because

[4180]

we can make money with it and hopefully prove to others that they can make money if they did invest in it.

Q. Do you know today how much of the revenue of the Brunswick Corporation is derived from the operation of bowling centers?

A. I do.

Q. How much, would you say?

A. Must I answer that? We don't publish the information.

The Court: Percentage-wise.

The Witness: Percentage-wise it is about 1/12th.

Q. Can you tell us what the total gross revenue of the Brunswick Corporation is?

A. In 1972 it was $634,000,000.

Q. Are we then to conclude that 1/12th of 672,000,000 dollars represents your revenue from bowling?

A. That's the revenue from the bowling center operations.

Q. Yes?

A. Yes.

The Court: Center operations alone, not the manufacture——

The Witness: No.

[4181]

Q. I don't think it could be much of a secret, Mr. Hanigan, in this courtroom any longer, since it's now a matter of our doing fractions and dividing——

A. I understand that.

Q. Indeed, sir, don't your annual reports usually break up the sources of revenue?

A. No, sir, they do not.

Q. Don't your statements to your stockholders speak to your bowling revenue?

A. No.

Q. Never have been so?

A. No.

Q. Do you remember an article about Brunswick in Forbes Magazine?

A. Yes.

Q. The article caused you to write a letter which I showed you a little earlier this morning; isn't that so?

A. Yes.

Q. I read to you:

"In addition the article implies that——"

Mr. Seeley: Is there something we can identify?

Mr. Hoffmann: Maybe I should have it marked.

[4182]

Mr. Seeley: I'd like to see it before any of it is read.

Mr. Hoffmann: I read it before.

Mr. Seeley: I still want to see it.

(Exhibit P-80 marked for identification.)

Mr. Hoffmann: I will give a description to the Reporter.

Two-page document entitled—letter entitled, "Dear Stockholders," on Brunswick stationery, first page signed by John Hanigan, second page attached called, "News from Brunswick Corporation."

The Court: Dated?

Mr. Hoffmann: Sorry, sir, there is no date except that on the news from Brunswick Corporation the headline is, "The following statement was issued by Brunswick Corporation April 27, 1972."

Mr. Seeley: Thank you.

Q. Did you recognize that this reserve that you had set up, Mr. Hanigan, was greater than was needed; did there come a time that you recognized that?

A. In 1968 we recognized that, yes.

Q. How much had been the reserve again?

A. There was one in 1964 of $15,000,000 and one in 1965 of $134,000,000.

[4183]

Q. And in 1968 you recognized that it was greater than necessary; is that right?

A. That's right.

Q. Do you remember the extent?

A. Approximately $8,000,000.

Q. It says here eight and a half.

A. All right.

Q. Now, then, that reserve was set up to cover losses, wasn't it, on these accounts receivable?

A. Yes.

Q. That we are speaking of.

Can you tell us now whether to a very large extent those losses haven't been wiped away over the years by income or revenue derived from the very repossessed equipment for which the reserve was set up?

A. They have not been wiped away, no.

We still have rather large losses that have not been wiped away.

[4184]

Q. Large in the sense of comparing them with the original reserve?

A. Large in any sense. Approximately $22 million.

Q. Was it against that $22 million that you set up a reserve of 150 million?

A. No, sir.

Q. What else?

A. We recovered some of our losses through sales of equipment and operation of equipment.

Q. You have recovered a great deal, haven't you?

A. Fortunately.

Q. Mr. Hanigan, in 1965 you were telling the proprietors that you were going to be in just to salvage, isn't that right?

A. That is correct.

Q. And you wanted the industry to understand, did you not, that you were going to come in and go out as soon as these centers were converted into good going businesses that could be sold, isn't that—

A. Yes, sir.

Q. —the meaning of your remark? But here and there you bought some centers, did you not, to serve as interceptors?

A. No, sir.

[4185]

Q. Between you and AMF, didn't you?

A. No, sir. We didn't buy any centers.

Q. When you say you repossessed, you repossess a machine, don't you, and the lanes?

A. Equipment; yes, sir.

Q. Equipment. When you go into Interstate, or any of the other 170 Brunswick owned and operated centers, you haven't just got equipment, have you?

A. Sometimes we re[illegible]sessed also other equipment, or bought it, at a bankruptcy [illegible]ale.

Q. But you have bowlers now in Emporia, Illinois—was it Emporia—Peoria; you have bowlers now in Peoria, Illinois, don't you, in a Brunswick operated center?

The Court: That proprietor didn't move. He is still in Peoria.

Mr. Hoffmann: He is still there.

The Court: Mr. Jones.

The Witness: I don't know Mr. Jones.

Mr. Hoffmann: Well, it is a hypothetical Mr. Jones, Mr. Hanigan. But he bowls in a Brunswick operated center.

Q. Now, you couldn't let him bowl, if all you had was title to the machine and lane, could you?

A. In most of these instances when we repossessed

[4186]

the equipment, we then negotiated with the man, or corporation, or whoever owned the building, and land, to try and lease it at a price that would enable us to make some money.

Q. You then leased the building?

A. Yes, sir; in most instances.

Q. In some instances you bought the building?

A. That is correct.

Q. The real estate. And you got hold, also, by some legal means or other, of the furnishings, didn't you?

A. Yes, sir.

Q. The carpeting, the settees, licenses—did you get licenses, liquor authority licenses, and the like?

A. I guess so. We have some. Must have gotten some.

Q. Liquor is an important part of this business, the cocktail bar in a bowling center is an important part of it, isn't it?

A. In some places it is; in others, it isn't.

Q. In most, isn't it; yields good revenue; you have to have a license to sell liquor, isn't that so?

A. Yes, sir.

Q. Almost throughout the United States. These other things Brunswick then acquired, a lease on the

[4187]

property, licenses when needed, furnishings of all sorts and conditions, I suppose, do you agree?

A. Yes, sir.

Q. And with it the leagues and the patronage of the bowlers who were accustomed to bowling at that bowling center, isn't that also so?

A. I didn't understand the beginning of that question.

Q. And Brunswick also acquired, at the same time as acquiring these other things that we have just mentioned, certain bowling leagues, bowling in the premises, and the patronage of individual bowlers who previously had been using the center, isn't that right?

A. If you mean acquired in the sense that we bought them, we did not. If they had been used to using it, of course, that was a consideration in evaluating the center.

Q. But if there were a league with a contract to bowl at the center, you would acquire that contract, wouldn't you?

A. I don't know. I never got into those details.

Q. You don't know the answer to that?

A. I don't.

Q. And when you took a lease, you acquired a

[4188]

lease, did you not?

A. The leases that we acquired were very short term, like two years, in most instances.

Q. Sometimes ten, weren't they?

A. In some instances, where we couldn't avoid them, yes.

Q. Now, sir, there have been some statements made at this hearing that a lease for property is the same thing as a management contract; do you understand that to be so?

A. We are talking about a different kind of lease now, I presume.

Q. Is there such a thing as a lease which you regard as a management contract?

A. I don't think that I can answer that question. I know that we have management contracts and I know that we have some leases. Whether the one is the equivalent of the other, I do not know.

Q. Now, sir, for quite a while most of the acquired centers, the bowling centers that were taken over and transferred to BCOD, and operated by BCOD, operated at a loss, didn't they, for quite a while?

A. Yes, sir. I am not sure that most of them did, but as a totality, they did; in total, they did.

Q. Then there came a time when it developed

[4189]

a positive cash flow, isn't that so?

A. Yes.

Q. And that is the point in time, according to your testimony, when the operation becomes profitable, is that right?

A. I did not say that. It does not become profitable when it develops a positive cash flow. At a later date it became profitable.

Q. Well, what else must it do to become profitable?

A. It must make enough money to cover depreciation.

Q. And whatever other costs are connected with it, is that right?

A. Yes, overhead and so on.

Q. Is it true that these hundred and seventy, or whatever the precise number is, bowling centers are now profitable investments of Brunswick?

A. Yes, sir.

Q. What is your opinion; is it your opinion that they become profitable because of increase in popularity for the game?

A. No, they become profitable for a variety of reasons. In some instances we shut down houses that we became convinced would never make it. In other places population trends have caught up with us. In

[4190]

other cases it is simply because they have been managed well. In other cases it is because the previous management just didn't want to pay us, and wouldn't, but kept the cash.

So there were a variety of reasons why we were able to turn them around.

Q. They are now profitable, that is your testimony?

A. Yes, sir.

Q. Is this the point in time in which the bowling industry generally, or the bowling operating industry generally seems to be perking up, doing better than it did in the '60's?

A. It has done better continuously through the '60's. There have been more bowlers. Precise figures are hard to come by. But it is my impression, and our impression, that the business never went away. People just thought it did.

Q. Well, if the business never went away, how can you explain the fact that—what is it?—9,000 pinsetters and lanes had to be repossessed by you and put into warehouses during the 1960's?

A. There were many people who entered the bowling business thinking it was the end of the rainbow. They found out that you had to work at it, and didn't

[4191]

work at it, or they were underfinanced, and consequently couldn't make a go of it from that standpoint.

There are others who just—I believe—went in it and took cash out of it, and never did pay any bills. There are a variety of reasons why we had to repossess equipment.

Q. Wasn't one of the reasons why you had to repossess that in a particular marketing area there were too many lanes servicing the population?

A. I don't know.

Q. You don't know that?

A. No, sir. I don't know how many lanes is too many.

Q. Well, if we have one lane for one person, two lanes for two persons, that would be enough, wouldn't it?

A. I would think so.

Q. And if we had 50 lanes for two persons, wouldn't you hold that that is too many?

A. That situation does not exist anywhere.

Q. Perhaps it exists in not so dramatic a form.

A. Possibly.

Q. Do you know what the relationship is between population and number of bowling lanes that you regard as economically healthy?

A. No, sir; because that varies by location.

[4192]

Q. Do you have any formula that you use in relation to that subject?

A. I do not.

Q. Do you know of any formula widely used within your own organization as to that?

A. No, sir; I don't.

Q. You do not?

A. No, sir.

Q. Did you ever hear of any as being used by Brunswick?

A. No, sir.

Q. Are you familiar with the phrase "evaluation report"?

A. Yes, sir.

Q. Do you know what it is?

A. In general I know what it is, an evaluation of a bowling establishment.

Q. Do you know generally that the evaluator indicates the number of potential bowlers, that is to say, the population of potential bowlers as against the number of lanes in these evaluation reports?

A. I have never seen an evaluation report.

Q. Does a formula like one to a thousand mean anything to you?

A. No, sir.

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[4194]

Q. Just for a moment, Mr. Hanigan, I'd like to show you something entitled, "Evaluation Report No. 76," it is plaintiffs' Exhibit 10 in evidence, Brunswick's Evaluation Report about a center in LeMar—called LeMar, Inc. in Poughkeepsie, New York.

Would you be good enough to follow along with me.

Do you notice there is a heading, "Competition," and then an inscription of some bowling houses that are in that area?

The Court: What page are you on?

Mr. Hoffmann: I am looking at page 15, your Honor, what was called a synopsis of these houses, as follows, and then it mentions some houses, Hobo County Lanes, three miles from subject, and so on.

And if you turn the page to the top of page 16, "including the subject 26 lanes there are 125 effective lanes serving a present population of 97,300 persons. This is a lanes to person ratio of 780 to 1.

"The estimated proper lanes per person ratio in a market of this type is 1,000 to 1."

[4195]

Do you observe that at the top of the page?

A. Yes.

Q. Is this your first experience in seeing the Brunswick evaluation report?

A. I believe it is. I don't recall—

Q. Never seen one of these before?

A. No, sir.

Q. Never been called to your attention that in such reports an effort is made to establish the estimated proper lanes to persons ratio in the market?

A. No, sir.

Q. Mr. Hanigan, do you know anything at all about what's happened to the Bowl-O-Mat center in Pueblo, Colorado?

A. I do not.

Q. Do you know anything at all about what's happened to the Bowl-O-Mat center in Paramus, New Jersey?

A. No, sir.

Q. Do you know anything at all as to what happened to Holiday Bowl-O-Mat center in Wappingers Falls, New York?

A. No.

Q. Do you know anything at all about what's happened to the Bowl-O-Mat center, Paradise Lanes, in

[4196]

San Juan, Puerto Rico?

A. Maybe I can shorten this up. I don't know anything about Bowl-O-Mat lanes at all, any of them.

Q. Would that include the situation as it existed in Fort Lauderdale where at one time the plaintiff had a center?

A. It does.

[4197]

Q. Now, before the luncheon recess, I read to you a quotation, which you said was properly quoted, Jack Hanigan, "a Brunswick business must have a technical advantage or be a major factor in the market or both."

I now have in front of me a copy of an article in Business Week Magazine, the October 3, 1970 issue, page 16. There is a quotation attributed to you here. The paragraph starts—

Mr. Seeley: May I see it before it is read?

Mr. Hoffmann: Surely. Perhaps as I read, you can stand alongside of me.

(Mr. Seeley examines.)

Q. It starts, "Hanigan,"—then it has two numbers, which I think are designed to represent your age. And lest this be a trade secret of some sort, I'm not going to read it. I will just say, "Hanigan says that Brunswick"—

The Court: He can't be drafted. Ask him his age. He has no control over it.

Mr. Hoffmann: I know some ladies that have.

The Court: That's different.

Q. "Hanigan, 59, says that Brunswick 'must

[4198]

either have a technological edge, or a commanding or important position in the market.' "

Does that accurately report a statement of yours?

A. I don't recall it. It may be accurate.

Q. It is the part that I have marked in there.

(Shown to the witness.)

The Court: What is the relevancy of your age?

The Witness: I don't think there is any. I have no control over what they put in a magazine.

Mr. Hoffmann: A technical advantage or a controlling position in the market, your Honor, I submit—

The Court: No, you didn't hear me. I said what is the relevancy of his age?

Mr. Hoffmann: I'm so sorry. I think his age is irrelevant and I would be most happy to have a reference to it stricken, if Mr. Hanigan wants.

A. These are my sentiments.

Q. Do they remain your sentiments today?

A. They do.

• • •

[4203]

Q. • • • Have you made any policy decisions, your company, as to closing down the Brunswick bowling operation activity in the United States?

A. No, sir.

Q. Do you have any plan to cover the contingency of a close-down in the near future?

A. It does not look imminent, so we have not bothered to do it.

Q. You haven't bothered to get up a five-year plan on it about phasing out of the bowling business?

A. The bowling center operating group has a five-year plan every year.

Q. But does the current one or any past one include a phasing out of the operation of bowling centers?

A. I don't believe so.

[4204]

I haven't looked at it in detail.

Q. You would have heard, wouldn't you, if it did?

A. I think I would have, yes, sir.

Q. Is the matter pending today anywheres in the Brunswick organization as to whether or not Brunswick will leave the bowling operating business altogether?

A. Not to my knowledge.

Q. Now, sir, earlier in your cross-examination by me I referenced interceptors; do you recall?

A. I recall that you did, yes.

Q. I am now going to read to you from Plaintiffs' Exhibit 64 in evidence, which is the five-year plan for 1966 to 1970.

Mr. Seeley: Page, sir?

Mr. Hoffmann: Page 9.

Q. "In mid-1966 a team of men will be assigned—" I'm sorry, your Honor.

The Court: I have it.

Q. (Continuing.) "In mid-1966 a team of men will be assigned to look at potential markets for new installations of used equipment," and then I skip a few lines, and:

"Consideration will be given to locating such

[4205]

new centers as interceptors to outlying competitively equipped bowling establishments where such an installation would prove profitable to Brunswick."

Would you like to see this written out?
I have underscored the line.

A. Yes, I see it.

Q. Do you know what it means?

A. No, sir.

Q. No knowledge of it at all?

A. No.

Q. Did there exist any—withdraw that, please.

"Consideration will be given to locating such new centers."

At this point we are talking about a new Brunswick operated center; is that right?

A. You are.

Q. Well, this document is.

A. That document is, yes.

Q. And that document is a five-year plan of the Brunswick Corporation for the years 1966-70 of BCO Division, is that right?

Would you like to see the title?

A. I take your word for it.

Q. Thank you.

[4206]

"Consideration will be given to locating such new centers—" that's new Brunswick operated centers—"as interceptors to outlying competitively equipped bowling establishments."

Can you explain from your knowledge of the industry what would be a "competitively equipped bowling establishment"?

A. I assume it would be equipped with AMF equipment.

Q. They were the only significant competitive supplier of bowling equipment; isn't that so?

A. There were others, but they were not as significant as AMF.

Q. So then, if I may:

"Consideration will be given to locating such new centers as interceptors to outlying AMF equipped bowling establishments where such an installation would prove profitable to Brunswick."

Does that seem like a fair reading of this?

A. That's what it says there.

[4207]

Q. Yes. Do you have any idea what the word, "interceptor" means in this context?

A. I know what it means, but I don't know what it means there.

Q. I don't know if the Judge will permit this, but will you be kind enough to tell us what "interceptor" means?

A. It means to put something in between, to intercept someone else's trajectory or something of that sort.

Q. So consideration will be given to locating new Brunswick centers as something put in between outlying AMF equipped bowling establishments where such an installation would prove profitable to Brunswick; is that a fair reading of that?

A. Of that, yes.

Q. Did you ever have occasion to overrule this or prevent this from happening?

A. I never saw it before.

Q. It wasn't called to your attention?

A. No. It also wasn't done.

Q. How do you know that?

A. I have been told that it has not been done but I never saw that before.

Q. Didn't you see this in 1970 when you were

[4208]

examined in this courtroom?

A. Five year plans are that high. I did not see it.

Mr. Hoffmann: Excuse me just one second, your Honor.

The Court: I think the record should note that he made a gesture in his answer to the last question

with his right hand indicating approximately a height of three feet.

The Witness: Yes, sir.

Mr. Hoffmann: Your Honor, if I may point to this exhibit, P-64, which is the one we have in reference, it is itself a long, thick exhibit, but nowheres near three feet, if I may be permitted to say so.

The Witness: I'm talking about all of the five-year plans from all of the divisions of the company. Some of them are more voluminous than others.

Q. Mr. Hanigan, you are aware of the fact, indeed, you so testified, that Brunswick acquired its first bowling center in December of 1964; isn't that so?

A. That's right.

Q. Do you know what Brunswick's intention was when it acquired that first center, what was its intention

[4209]

in doing so?

A. Yes. It was to salvage our position.

Q. That is, the Brunswick Division?

A. Yes.

Q. Did it at the time also have the intention of acquiring the bowling centers?

A. Of course.

Q. And it in fact did so, didn't it?

A. Yes, sir.

Q. Do you recall that in 1970 I inquired as to this matter of you?

A. No, I don't recall.

Q. If I may, I will read to you your testimony then and ask you if you affirm it today.

The Court: Transcript, volume, page.

Mr. Hoffmann: Transcript is page 2102, the 1970 proceedings of April 15, 1970, volume 15.

Second line, "Question: Mr. Hanigan, what was Brunswick's intention when Brunswick acquired its first bowling center in December of 1964?

"Answer: Its intention was to conserve the assets of the company.

"Question: Did it also have the intention to acquire that bowling center?

[4210]

"Answer: It did in fact acquire it.

"Question: If it did, in fact, acquire it, it had the intention to do so, isn't that right?

"Answer: Yes, sir.

"Question: Is that also true of the second bowling center which was acquired by Brunswick, that is to say, that Brunswick in acquiring the center had its intention of doing what it did?

"Answer: Yes, sir.

"Question: And would your testimony be the same as to all 170 bowling centers now operated by Brunswick?

"Answer: Yes, sir.

"Question: In other words, that when Brunswick acquired them, it did it not by chance or accidentally, but with the intention of doing so?

"Answer: Yes, sir."

That's your testimony, and may I intersperse here do you still affirm the testimony which I just read?

A. Yes.

Q. Then I went on with this question:

"Question: Now, sir, when Brunswick for-

[4211]

gave a debtor, didn't demand that the debtor pay on time, did it do that by chance?

"Answer: No, sir.

"Question: It did it with the intention of forgiving, isn't that right, or extending credit some more?

"Answer: Extending, extending, yes, sir.

"Question: Now, when Brunswick refused to extend credit further and repossessed the equipment it did not do that accidentally, did it?

"Answer: No.

"Question: It did it intentionally, did it not?

"Answer: Yes, sir."

Do you affirm that?

A. Yes.

• • •

[4220]

Q. Sir, may I ask you whether or not you know with what intention Brunswick acquired a center called Interstate Lanes in the Bergen County, New Jersey, area?

A. I do not know about that particular one; no, sir; or any of them specifically.

Q. And may I ask you if you know with what intention Brunswick acquired Lodi Lanes and Fair Lawn Lanes in that Bergen County area?

A. I do not.

Q. May I ask you, sir, if you know anything at all about Brunswick's intention in respect of Brunswick's acquisitions of centers in the following markets: (1) The Fort Lauderdale, Florida, area, do you know anything about Brunswick's intention in acquiring centers there?

A. No, sir.

Q. (2) The area which might be called the Pueblo, Colorado, area, do you know anything at all

[4221]

about Brunswick's intention?

A. In all of these cases our intention, of course, was to protect the assets of the corporation.

Q. Do you know anything at all about the particular intention expressed at the time when these acquisitions we just referred to were made?

A. You mean the specific ones?

Q. Yes.

A. No, sir.

Q. I ask you, sir, if you know anything at all about the intentions which Brunswick had in forbearing to close down a center in San Juan, Puerto Rico, called Star Bowl?

A. I do not.

Q. Now, sir, do you know whether or not, when Brunswick failed to close down a center called Belmont Lanes in Pueblo, Colorado, its failure to do so had the effect of preventing a certain amount of bowling business going from that center, Belmont, to plaintiffs' center, Bowl-O-Mat, Pueblo?

A. I know nothing about it.

Q. You know nothing about it: And is your answer the same in respect to the effect of failing to close down centers in the other market areas I referred to just a moment ago in my questions?

[4222]

A. Yes, sir.

Q. Now, sir, do you know whether or not Brunswick has ever acquired a bowling center in a community in which, after it has made its acquisition, Brunswick has a hundred per cent of the bowling business in the community, do you know whether that has ever happened?

A. Yes, it has.

Q. You know that it has happened?

A. Yes.

Q. And do you know where?

A. Covington, Georgia.

The Court: I missed that. Mr. Bremer, read that.

(Record read.)

The Court: Thank you.

Q. What is the name of the center there?

A. I don't recall. It's the only one——

Q. How do you happen to know about that particular center?

A. We have a plant there.

Q. A manufacturing plant?

A. Yes, sir. And the manager asked us to keep it open, which we tried to do, and failed.

Q. Do you know whether or not in a town called

[4223]

Boonville, Indiana, Brunswick acquired a center called Lincoln and achieved 100 per cent of the market?

A. I do not.

Q. Do you know whether or not in a town called Huntingburg, Indiana, Brunswick acquired a center named Hunters and achieved 100 per cent of the market?

A. I know nothing about it.

Q. Do you know whether or not in a town called Washington, Indiana, Brunswick acquired a center called Laurel and achieved 100 per cent of the market?

A. I know nothing about that one, either.

Q. Do you know whether or not in a town or city called Holyoke, Massachusetts, Brunswick acquired a center called Holyoke and achieved 100 per cent of the market?

A. I know nothing about it.

Q. Do you know whether or not in the college town of Northampton, Massachusetts, Brunswick acquired a center called Northampton and achieved thereby 100 per cent of the market?

A. I do not.

Q. Do you know whether or not in a town of New Paltz, New York, Brunswick acquired a center called College and achieved 100 per cent of the market?

A. I heard something about that. I did not know it

[4224]

was a hundred per cent of the market.

Q. You did hear something about that. What did you hear?

A. I can't recall. I remember the name, because I was familiar with it.

Q. When you were being examined by Mr. Seeley earlier today you spoke of Brunswick only owning a small—very small percentage of the bowling centers of the United States, isn't that right?

A. That's correct.

Q. Does the circumstance that Brunswick owns only a small percentage of the bowling centers in the United States have any meaning to you in terms of what this case is about, what this lawsuit is about here?

A. I don't follow you. I don't know what you mean. It doesn't have any meaning to me, no.

Q. Do you know what this lawsuit is about, this case in which you are testifying now?

A. Generally speaking.

Q. Do you know—

A. Would you like me to tell you what I think it is about?

Q. Yes, I am asking if you know.

The Court: Be careful.

[4225]

A. I think that your client is trying to say that we have no business to be in the bowling business, which I can't understand.

[4226]

Q. Do you know anything more about the case than that?

A. That's all.

Q. Do you know anything about the nature of the charges that are made against your company?

A. No, sir.

Q. Do you know whether or not, Mr. Hanigan, it has been the effect—and, mind you, I use the word, "effect,"—it has been the effect of any Brunswick acquisition in the United States to exclude another bowling center from doing business in the area where the acquisition was made?

A. I would not believe that to be so.

Q. Do you know? is my question.

A. I don't know.

Q. Do you know whether or not in any marketing area in the United States it has been the effect of a Brunswick acquisition of a bowling center to partially exclude—

that is to say, to deprive an owner of some of the business which he would otherwise have enjoyed if Brunswick had not operated their centers in marketing area?

Mr. Seeley: I object, your Honor. It is counsel's definition that says that preventing another center from getting part of the

[4227]

business is a partial exclusion. It may be simply competition, which has nothing to do with exclusion, in the sense of—

The Court: Can't he preface the question by saying, "Do you know?" If Mr. Hanigan doesn't understand what he means, let him say he doesn't understand the question.

No, I will permit it. Repeat the question, Mr. Reporter.

(Question read.)

The Court: Do you understand the question?

The Witness: I do not know.

The Court: "I do not know."

Q. Now, Mr. Hanigan, let us suppose that Brunswick acquires a center in—

The Court: Peoria.

Q. —Peoria, Illinois, operated by a Mr. Jones, Tom Jones—

The Court: You don't know Mr. Jones, do you?

The Witness: No, I don't.

Q. (continuing) Let us suppose that Brunswick ac-

quired a center across the street from Mr. Tom Jones' center in Peoria, Illinois. And let us suppose further

[4228]

that Brunswick decides it is going to lower the price for bowling by five cents, from 60 cents to 55 cents, at this center in Peoria, Illinois.

Can you think of any reason why Brunswick would be unable to do that?

A. If the people followed the policy that I have laid down, they would not be able to do it. And—

Q. If they followed the policy.

A. Yes, sir.

Q. But assuming they didn't follow the policy, can you think of any reason why Brunswick would be unable at that center to lower the price a nickel?

A. One can always lower a price. It is harder to raise it.

Q. One could always. And, indeed, one could lower the price of a particular bowling center and carry the operation at a loss for a long time, couldn't he, if need be, if he wanted to?

A. Could be, yes.

Q. Yes. If that one were Brunswick.

A. If that one were anyone.

Q. Well, if that one were Tom Jones in Peoria, Illinois, a man who is just eking out his living from a bowling center equipped with Brunswick automatic pinsetters and lanes, for which he must

[4229]

pay a sizeable sum of every game back to Brunswick, his competitor, he might go broke, if he tried to control the price of the lineage, isn't that so?

A. He might.

Q. Has anybody spoken to you concerning the significance of the existence of the power to fix price in the law?

Mr. Seeley: In what?

Mr. Hoffmann: In the law.

The Court: Repeat the question, please.

(Question read.)

The Court: Have they?

Mr. Seeley: I object, your Honor.

The Court: No. Has anybody spoken to you about that?

The Witness: Not that I recall; no, sir. Except the Wage and Price Board.

The Court: Except what?

The Witness: Except the Wage and Price Board.

The Court: Phase I and Phase II.

The Witness: Yes, sir.

Q. Not otherwise, just in that connection. Has anybody, sir, spoken to you about the significance in the law of the existence of the power to exclude

[4230]

competitors from the marketplace?

A. No, sir.

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[4233]

RE-DIRECT EXAMINATION.

By Mr. Seeley:

Q. Mr. Hanigan, Mr. Hoffmann elicited from you the statement that Brunswick has no plan at the present time

to close down the bowling centers which BCOD operates in the near future.

Do you know of any business reason why it has no such plan?

A. Well, we are making money with them. They are an asset of the corporation, and it's my job to make sure that the stockholders' interests are taken into account.

It would be foolishness for us to close down these centers as long as we can make money with them.

Q. What would be the financial effect on the stockholders if you closed them down?

A. Well, in the first place, we would have considerable expense in closing them down, paying separation pay to some of the people involved, I would presume, we would have to, in moving the equipment to a warehouse, and in addition to that, at this time we have some leases which we could assign to a new owner but which we cannot breach.

So that there would be considerable expense in addition to the loss of profit that we are making.

Q. What are Brunswick's five-year plans, Mr.

[4234]

Hanigan?

A. A five-year plan is a plan which is submitted each late spring which in effect tells the things that the Division hopes to do or fears might happen.

They are fairly loose things, they are in no way a budget. The only real sure thing about them is that as soon as they are issued, they are out of date and have to be continuously changed.

Q. Well, if there is in a five-year plan a suggestion as to something which Brunswick might do in the future, does that constitute a policy or program of Brunswick?

A. No.

Q. What has to happen before any such suggestion can become a program?

A. Well, it would, in the first place, have to be re-examined by the Division at the time when it would be considered for implementation.

And in the second place, approved by the Division manager, and in some instances, by myself or the Board of Directors if capital was to be employed.

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[4235]

Q. Do you recall answering questions put to you by Mr. Hoffmann about Brunswick's acquiring bowling centers?

A. Yes.

Q. When Brunswick repossesses pursuant to rights in its conditional sales agreements, what does it acquire?

A. It acquires bowling equipment.

Q. Now, is that a bowling center?

A. No, sir.

Q. And what more than must Brunswick do if at the place where those repossessed pinsetters and lanes are located it wishes to have a bowling center which it can operate?

A. Well, in the first place, it would have to arrange to lease the premises on as short a term as possible with renewals.

In the second place, and very often, we would have to replace carpeting and other furniture that has nothing to do with bowling at considerable expense.

And in the third place, we would have to develop

[4237]

the business all over again because the places that we do

take over are bankrupt and the business has run downhill, mostly.

Q. Do you know of any instance, Mr. Hanigan, where Brunswick has acquired by purchase a bowling center business otherwise than when the previous operator of that business was hopelessly delinquent in his payments to Brunswick under a contract for the sale of equipment?

Mr. Hoffmann: I object to the form of the question.

(Record read.)

The Court: It is quite a question. I will permit it.

Do you understand the question?

The Witness: I understand it, but we don't acquire a business, we acquire the pinsetters and we have to then make a business out of it, but in no instance do I know of this happening where the proprietor was not hopelessly delinquent.

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[4238]

Q. Mr. Hanigan, do you know whether or not since BCOD was organized Brunswick has in some cases repossessed equipment and has not thereafter operated the bowling center business at that location?

The Court: Do you know of any?

The Witness: I know that we sold many of the places that we have repossessed in place.

Now, where those specific places were, I do not know, but I do know that many of the repossessions were sold in place.

[4239]

Q. Do you know whether or not since January 1, 1965, any equipment after repossession has been removed from the premises?

A. Oh, yes, because we did build up an inventory of used pinsetters.

Q. Now, despite the fact that you do not know by name or otherwise individual bowling centers, do you regularly receive and review statistical reports on the operation of BCOD?

A. If by statistical you mean lineage reports, and that sort of thing, I do not.

The Court: The overall picture financially speaking.

The Witness: Financially speaking, I certainly do.

Q. Do you receive any reports about the number of centers it is operating?

A. No, sir.

Mr. Seeley: No further questions.

The Court: Any re-cross-examination?

Mr. Hoffmann: Yes, sir.

RE-CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Do you know, Mr. Hanigan, whether or not the Rahway center was hopelessly delinquent at the time

[4240]

Brunswick took a lease for the premises?

A. I do not.

Q. Do you know whether or not the Belmont center in Pueblo, Colorado, was hopelessly delinquent at the

point of time when Brunswick took over the operation of Belmont?

A. I do not.

Q. Do you know whether or not any of the centers involved in the areas of Poughkeepsie, New York, and surrounding, Paramus, New Jersey and surrounding, Fort Lauderdale, Florida and surroundings, and Pueblo, Colorado, were hopelessly delinquent at a point in time when Brunswick took them over?

A. I am confident they were or they wouldn't have been taken over.

Q. But you don't know, do you?

That's your testimony?

A. That's right.

Q. By the by, if Brunswick was so bankrupt at 1965, where did it find that 400 and what was it, 90-some thousand dollars with which to buy AIBC?

A. I didn't understand the question.

The Court: Lay the foundation first.

Q. Do you know anything about Brunswick buying up some 26 centers at a bankruptcy sale in 1965?

[4241]

A. I have heard about it, yes.

Q. Do you know that the name of the bankrupt chain was called AIBC?

A. Yes.

Q. Do you know how much money it cost Brunswick to buy those centers?

A. I do not.

Q. If I put it to you that it was 490—

The Court: 479.

Q. —$479,000, according to an exhibit introduced by Brunswick, can you tell us where it got that money to buy those centers in 1965?

A. Out of the general funds of the corporation.

Q. It had the funds to do it; is that right?

A. Yes, sir.

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[4257]

DANIEL PARKE LIEBLICH, having been previously duly sworn, was recalled on behalf of the Plaintiffs and testified further as follows:

The Court: You are still under oath, Mr. Lieblich.

The Witness: Yes, sir.

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Lieblich, I don't think it is necessary for you to reidentify yourself to the Court and jury. But I ask you to tell us, as crisply as you can, whether you have any background experience in real estate law?

A. Yes, sir.

Q. What is that?

A. Prior to the time that I devoted most of my efforts as a lawyer to running Treadway Companies, and its predecessor, my specialty of law was real estate and corporate activity. I handled many real estate syndications over many years, and certainly leases, and purchasing real estate, and anything to do with real estate, in which I specialized.

[4258]

Q. In the course of your practice of law did you have occasion to examine many leases on real property?

A. Yes, sir; I examined many, I drew many. I still get all the leases of our own company. I help draw the leases of Treadway these days.

Q. And in connection with your function as president of NBO and Treadway, have you had occasion to negotiate leases?

A. Yes, sir; many occasions.

Q. Do you know what a lease is, sir?

A. Yes.

Q. Do you have in front of you the submission made by Mr. McNeill on behalf of Brunswick yesterday of documents—

A. Yes, sir.

Q. —which were referred to as leases?

A. Yes, there were six lease agreements on BCOD centers that Mr. McNeill turned over to you, Mr. Hoffmann.

Q. What is a lease; can you tell us what a lease is?

A. Well, a lease is when someone rents something and pays something for it.

Q. Pays somebody for the use of his property?

A. Yes.

[4259]

Q. Is what you have in your hand a lease?

A. Yes, sir; each of these six Brunswick leases are on a printed form. Each of the six have the identifical printed form, which bears on the bottom 1600.20 R 3-67 1 of 6. It's a printed agreement called Brunswick Bowling Establishment Lease. And all six of these leases are identical in the basic format.

Q. May I have one, please?

A. Yes.

(Handed to Mr. Hoffmann.)

Mr. Hoffmann: I ask that this form identified by the witness be marked as Plaintiffs' Exhibit 81 for identification. It is a copy of a lease with a covering letter dated June 25, 1970, between Vincent A. Sorbello and Brunswick.

(Exhibit P-81 marked for identification.)

Q. Do you know what a management contract is, as that term is understood in the bowling industry?

A. Well, I think in its broader context, a management agreement is a management agreement.

Q. When you say a management agreement, describe for us what is such an agreement?

A. In simple essence—

The Court: Let me interrupt you, Mr. Lieblich.

[4260]

(Short interruption while another matter is handled by the Court.)

The Court: All right, Mr. Hoffmann.

Q. Now, in a management contract, what is the heart of it?

A. One party agrees to supervise the operations of someone else's property or business, for a fee.

Q. And how would you differentiate a management agreement from a lease?

A. They are almost the antithesis—the very opposite of one another. Under a lease you pay someone something for the use of his property. In a management agreement you get a management fee for the supervision of the operation of someone's property. Under a lease, particularly when it is a lease of a going business, the tenant enjoys the profits of the business, if there is a profit, but if there is a loss, the tenant absorbs the entire loss.

In a management agreement, almost normally and certainly specifically with the Brunswick management agreements that I have examined, Brunswick gets a fixed fee, and then a fee depending upon the profitability of the operation. But they do not assume any liability for any loss.

So there is an absolute difference between the

[4261]

two. In one they get a fee, regardless of the profitability of the operation. Under a lease, if they do well by running the business, they get a profit; if they do poorly, they lose the money. But the landlord will always get the rental provided for in a lease agreement.

[4262]

Q. In other words, the landlord doesn't care whether the tenant is rich or poor, he insists on getting paid his rent?

A. Well, I think the landlord cares, but nonetheless, he wants to get paid.

Q. In a management agreement, it is different?

A. Yes.

Q. Can you just list briefly some others, if you can think of any now, between a lease and management agreement?

A. Well, a lease is a valuable asset, it is an acquisition of something.

A lease can be recorded in the county courthouse.

And in the Brunswick lease agreements there is a provision that they can be recorded.

It is an asset that can be sold. A lease can be transferred or assigned.

The Court: Or pledged as collateral?

The Witness: Yes.

It is an asset that can be put on a balance sheet and can be written off for tax purposes for getting some benefit taxwise for the value of a lease.

Q. So that when someone acquires a lease, he acquires an asset; is that right?

[4263]

A. Yes. In our company we have any number of leases which we consider to be extremely valuable assets.

Q. Now, sir, did you have occasion to examine the Rahway arrangement which Brunswick produced for us?

A. Yes.

Q. Do you have that with you?

A. Yes, I do, sir.

Q. Is that Plaintiffs' 67 in evidence?

A. Yes.

Q. Tell us, please, your opinion as to what form of transaction the Rahway agreement is?

A. It says it is a lease.

Q. And it is a lease?

A. It says Brunswick bowling establishment lease.

The next paragraph, it says, "This lease dated July 1970 between Rahway Rec, the landlord, and Brunswick, called the tenant," then it goes on to describe the normal landlord and tenant relationships that one would find in a lease agreement.

It is also acknowledged by Mr. Rudo for Brunswick in the presence of one of the attorneys of Brunswick as a lease. He acknowledges that Brunswick signed it as a tenant.

Q. Now, there isn't any doubt in your mind that this is a lease; it looks like a lease, does it

[4264]

feel like a lease?

A. It is a lease, sir.

Q. Now, what is there, if anything, in the Rahway lease which could possibly lead anyone to describe it as a management agreement?

A. From a legal standpoint?

Mr. Seeley: I object to the form of the question.

(Record read.)

The Court: No, sustained as to form. Rephrase it.

Q. Mr. Lieblich, you have read the Rahway agreement closely?

A. Yes.

Q. Is there any provision in that agreement which in your opinion makes Brunswick the manager of the center for Rahway Recreation?

A. No, sir.

Q. Contrary-wise, is there anything in the agreement which makes Rahway a manager of any sort for Brunswick?

A. No, sir.

Q. Tell me, did you notice that there existed in the Rahway agreement an option?

A. Yes.

[4265]

Q. Was that an option running in favor of Brunswick?

A. There were several options in there.

There was one option whereby Brunswick has the right to purchase the cocktail lounge, under the lease, Brunswick specifically did not lease the area of the cock-

tail lounge which the owner was continuing to operate for itself.

Brunswick has an option to purchase the cocktail lounge business. I assume this is something to do with the operation of the New Jersey law.

There is an additional option whereby Brunswick has the right to purchase the land and building.

Q. The option to purchase, is that the one about which we heard testimony the other day that Brunswick has suddenly written a letter cancelling it?

A. Yes, sir.

Q. Did you have a chance to examine these leases closely, the ones that were handed over yesterday by Brunswick?

A. Yes.

Q. Tell us, please, if you can, what judgment were you able to formulate about the length of the terms of the leases?

[4266]

A. Well, they vary a bit.

This one, Rahway, which is BCOD No. 391 on one of our exhibits, is for a seven-year period with renewal options for Brunswick totalling an additional 20 years.

The one in El Cajon Bowl, which under our exhibit was Brunswick's operation No. 378, is 34 months with option to Brunswick to renew for an additional period of 13 years.

The one, the lease on James Lanes, which on our exhibit was Brunswick operation No. 388, is for a basic period of three years, again with renewal options for Brunswick of additional periods of 17 years.

Q. Does that mean, when you speak of these additional options as in this last case, Brunswick can, if it

pleases, have a lease for 20 years, that is, the original three plus 17?

A. Yes, sir.

Q. And the landlord can't prevent that?

A. There is no provision for the landlord to prevent it.

There are only two more. One is James Lanes—excuse me. Did I just testify to James?

Q. Yes, you mentioned it.

A. Another one is Marshfield, Mountain Lanes, which

[4267]

is No. 387 on the spread sheet.

This is for a period of three years, again with renewal options for Brunswick for an additional period of time for 17 years.

And the last one is Gladstone, Missouri, which was BCOD operation No. 397.

This is for a period of five years with Brunswick renewal options for additional periods of 15 years.

Q. Thank you, Mr. Lieblich.

By the way, are you on the Brunswick mailing list?

A. Yes, sir.

Q. Is plaintiffs' 80 for identification a document which you received in the mail?

A. We are on the Brunswick mailing list for stockholder information purposes.

Q. Is this a document which is mailed to you?

A. Yes, it was mailed to our company, which is—yes.

Mr. Hoffmann: Your Honor, I'd like to offer into evidence Plaintiffs' 80. This is the Hanigan stockholder letter with the attached news from Brunswick.

It was identified in the course of the cross-examination of Mr. Hanigan.

[4268]

The Court: Yes?

Mr. Hoffmann: I'd now like to offer it into evidence through my own witness.

The Court: Do you want to be heard, Mr. Seeley?

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-80 received and marked in evidence.)

Mr. Hoffmann: 81, the Sorbello bowling establishment lease, which was identified through this witness, I'd like also to put into evidence.

The Court: That's the lease Mr. McNeill produced?

Mr. Hoffmann: Yes.

The Court: Into evidence.

(Exhibit P-81 received and marked in evidence.)

Mr. Hoffmann: Now, can we put in one of these, your Honor, about which the witness has just testified?

I ask to have received in evidence as Plaintiffs' 82 a lease dated February 27, 1970, between Felker and James' Lanes, Felker property in James' Lanes, together with a covering letter

[4269]

from Brunswick to something called BIC Properties.

The Court: That's another instrument produced by Brunswick?

Mr. Hoffmann: Yes.

The Court: Into evidence.

(Exhibit P-82 received and marked in evidence.)

Mr. Hoffmann: If there are any handwritten markings on these, I didn't check through them to see, I would ask that they be disregarded.

The Court: Later on.

Are you finished with the direct examination?

Mr. Hoffmann: I just have some hemstitching in this matter.

The Court: How about a little knitting?

Mr. Hoffmann: Just a short matter and it is highly technical, but I thought I'd do it.

By Mr. Hoffmann:

Q. Mr. Lieblich, from your knowledge of the operation of Brunswick operated centers and Brunswick—withdraw it.

From your knowledge of Brunswick equipped centers can you state for us whether a purchaser of Brunswick pinsetters and lanes in the normal course after the purchase is made continues to have a consider-

[4270]

able amount of business with Brunswick, his supplier?

A. Yes, sir.

Q. What is the character of that?

A. Well, in different categories, Brunswick's field representatives and sales representatives would normally be in a bowling—a Brunswick center, certainly every six weeks.

Lanes are often resurfaced by Brunswick crews, that was our former experience, every year we used to have Brunswick do our lanes with their crews.

Pins are purchased from Brunswick's main office, and they are shipped into the center.

Q. Where is the main office, by the way?

A. It is in Chicago, or it is now in the suburbs of Chicago.

And pinsetter parts were bought with frequency, and they are still, c.o.d. notwithstanding.

Q. Are those things part of the regular servicing or dealing between Brunswick and its customers?

A. Yes.

Q. And as for the equipment itself, where is it made, do you know?

A. I believe it is made in Muskegon, Michigan.

Brunswick has a huge plant there.

[4271]

They ship from there to the various Brunswick customers throughout the United States?

A. Yes.

Q. One final question, sir: In your opinion when Brunswick acquires a management agreement is that an acquisition of an asset?

A. Oh, yes. I have looked at their management agreements and they seem to me to be the same type of assets that we consider when our company has management agreements.

I have read the management agreements that Mr. McNeill turned over to you, Mr. Hoffmann. There are a list of 53 that they have had, some have been terminated.

There is in these management agreements a basic fee. I am looking now at the last form, which is 1973, that I gave you, Mr. Hoffmann.

Under this management agreement Brunswick gets a basic management fee of $12,000 per year, and then they get an additional revenue through management fees, if the

gross revenues of the center which they manage attain a certain level, and then they receive 50 per cent of the profits from the center which they manage.

So I would say, sir, this is an extremely valuable asset that emanates from not just one management

[4272]

agreement but the 53 which they have had and those which they still do.

Mr. Hoffmann: Before you step down, your Honor, I'd like to also have put into evidence a two-page letter, option agreement, June 25, 1970, between Sorbello and Brunswick, handed over to me a few minutes ago by counsel for the defense.

Mr. Seeley: No objection.

(Exhibit P-83 received and marked in evidence.)

Q. Give me the most recent agreement you have there?

A. Yes. This is a form entitled "Brunswick Corporation, Management Agreement."

The date on the bottom, April 1973, and the top it says 1973 form.

Q. Was your examination of this agreement part of the basis for your remarks about the management agreement in your testimony?

A. Yes.

Mr. Hoffmann: Your Honor, I will ask that this go into evidence, form called a 1973 form of Brunswick Corporation management agreement presented to the plaintiffs by defendant sometime

[4273]

yesterday.

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-84 received and marked in evidence.)

Mr. Hoffmann: No further questions.

CROSS-EXAMINATION.

By Mr. Seeley:

Q. Does plaintiff Treadway Companies have any management agreements for any bowling centers?

A. Yes, sir.

Q. How many are bowling centers which Treadway Companies, Inc., manages?

A. There are five.

Q. Where are they located?

A. They are located in Richmond, Indiana; in Milford, Connecticut; in Stamford, Connecticut; in Nashua, New Hampshire; and in Greenfield, Massachusetts.

Q. Is five the total number that Treadway Companies has ever managed, or have there been more?

A. There have been a few more.

Q. How many more?

A. There was one in Lanecrest, Ohio; there was one in Manchester, New Hampshire; and some years ago for a very short period of time there was one in West Hampton,

[4274]

New York.

Q. And who were the other parties to these management agreements?

A. United Bowling Center was the owner of a corporation, the management agreements were with the companies in the locations I have described.

Q. For all of these things?

A. Yes.

Q. Does Treadway Companies have any interest in United Bowling Centers other than the management agreements?

A. Yes, it does.

Q. What is the nature of the interest?

A. It has a stock interest in United Bowling Centers.

Q. What percentage of the stock of United Bowling Centers does it own?

A. Approximately 47½ per cent.

Q. Does it have any options to acquire any more?

A. No.

Q. For how many years has Treadway Companies been operating bowling centers which belong to subsidiaries of United Bowling Centers?

A. Since about 1965.

[4275]

Q. And for how long has Treadway had a stock interest in United Bowling Centers?

A. The stock interest was acquired approximately eight months after the management contracts were entered into.

Mr. Seeley: That's all.

Mr. Hoffmann: Your Honor, before the witness steps down, I just want to put in a few more to complete my day.

These are two annual reports of Brunswick of which some reference was made in the testimony for 1971 and 1972.

Mr. Seeley: Brunswick annual reports? I certainly can't object to that.

(Exhibit P-85 and Exhibit P-86 received and marked in evidence.)

Mr. Hoffmann: P-85, the annual report for 1971 of Brunswick, and P-86, the annual report for 1972 for Brunswick.

Then, if your Honor please, in the course of my cross-examination of Mr. Hanigan yesterday I showed Mr. Hanigan a copy of the Investor's Reader which contains an article about Brunswick, and I asked Mr. Hanigan several questions concerning quoted matter that was in the article

[4276]

that the witness agreed that he was properly quoted, and it is for that reason that I offer it into evidence, the Investor's Reader of July 1, 1970.

Mr. Seeley: No objection.

(Exhibit P-87 received and marked in evidence.)

Mr. Hoffmann: I have no further questions of Mr. Lieblich.

Mr. Seeley: No further questions.

(Witness excused.)

Mr. Hoffmann: Plaintiffs rest.

The Court: Defendant rests?

Mr. Seeley: Defendant rests, your Honor.

(Short recess.)

• • •

[4330]

The Court: Before we go any further, remaining before the Court for its determination this morning is the motion of the defendant for a directed verdict and the plaintiffs' counter motion for a directed verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure.

As the Court has previously stated, the

[4331]

standard for granting a motion pursuant to Rule 50 as stated in Brady v. Southern Railway Company, 320 U. S. 478, 479-80, 1943, to wit, the motion can only be granted when there can be but one reasonable conclusion as to the verdict.

Guided by this standard and the principle that the party against whom the motion is made is entitled to have all of the reasonable inferences that can be drawn from the evidence, Gizzi v. Texaco, Inc., 437 F. 2d 308, Third Circuit, 1971, the Court has considered the arguments of both counsel in support of their respective motions, and having reviewed the evidence, however, the Court is of the opinion that neither movant has carried its burden under Rule 50.

Plaintiffs' motion for a directed verdict and defendant's counter motion for directed verdict are denied.

• • •

[4491]

Mr. Seeley: May it please the Court, Mrs. Smith, and gentlemen of the jury:

• • •

[4557]

Naturally the only dollar evidence in the record as to damages is the plaintiffs' evidence. The defendant is not going to introduce evaluation of damages which they don't think exist at all.

But if you should find that there was any damage for what plaintiffs sought to recover, you are not bound by the plaintiffs' figures. After all, it is opinion evidence and you are entitled to consider it in light of all of the circumstances in the case and see whether you think the opinions are reasonable, whether the dollar valuations are based upon facts from which they can reasonably be inferred.

Let me give you one example of reasons why you might have second thoughts about certain

[4558]

damage claims. In Paramus, New Jersey, for instance, the testimony is that if one or two or three of the Brunswick houses closed down, Paramus Bowl-O-Mat would enjoy an increase of, how much, from 136,000 to 150,000 more revenue per year.

Why don't we ask ourselves, what happened to all of the bowlers who used to bowl in these centers that have closed down, why aren't all of those bowlers crowding the rafters of Paramus Bowl-O-Mat and giving it all of the business it can handle; in other words, it is just not necessarily true that when one center closes down another one gets a great share of it, especially like in a crowded community like Bergen County where the bowlers have a great many choices of places where they want to bowl.

And if a bowling center has gone as long as Paramus and still is not attracting enough bowlers to be profitable, you are entitled to question whether this magic leap to prosperity would occur if one, two or three of the Brunswick centers closed down, and you are also entitled to consider that if Brunswick gave up the operation of one, two or three of those houses, that does not necessarily mean they would close down.

[4559]

Suppose Brunswick sold them to somebody, somebody else ran them.

Then where would the 136,000, what not, come into Paramus Bowl-O-Mat?

So that there is no gold plated guarantee of instant profits in the prospect that Brunswick might be forced out of the bowling center business.

• • •

[4655]

The Court: Mr. Pfeifer, your foreman, ladies and gentlemen of the jury, we have arrived at the stage in these proceedings where it is my duty to give you instructions as to what law or laws control in this type of case and regardless of whether or not you agree with the law as given to you by the Court, you must follow and be guided by it, and apply it to the facts in this case.

At the outset, I am sure counsel agree with me, when I say to you that the Court is very appreciative of the services that you have performed as jurors and we thank you. Another point, before I forget it, I have a habit of speaking rapidly. If I do, if you will raise your hand, I will take it as a signal to slow down.

I'm sure you'll agree when I say that this case is not the ordinary run-of-the-mill case. It is quite different and why do I say this—because it involves alleged violations of

what are known as the Clayton Anti-Trust Act and the Sherman Anti-Trust Act.

These are statutes passed by Congress and this Court has what is called jurisdiction in these type of cases. Perhaps you are wondering why the laws in question are called the Sherman

[4656]

Anti-Trust Act and the Clayton Anti-Trust Act. They are named after the legislators who introduced or played a part or were instrumental in their passage.

As you know by now, this is an action by the parent company, Treadway Companies, Inc., formerly named National Bowl-O-Mat, and the subsidiaries of the parent company, i.e., corporations known as: Holiday Bowl-O-Mat, Poughkeepsie, New York (near Wappingers Falls); Paramus Bowl-O-Mat, Paramus, New Jersey; Paradise Bowl-O-Mat, San Juan, Puerto Rico; Pueblo Bowl-O-Mat, Pueblo, Colorado; Indianapolis Bowl-O-Mat, Indianapolis, Indiana; and Treadway Companies, Inc. on behalf of Fort Lauderdale Bowl-O-Mat, Fort Lauderdale, Florida (now out of business) and Treadway Companies, in itself, in which damages and loss of profits are claimed under Section 2 of the Sherman Anti-trust Act and Section 4 of the Clayton Anti-trust Act from the defendant Brunswick Corporation.

Section 15 of the anti-trust act provides: "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in

[4657]

any district court of the United States *** for damages."

The defendant, as I have told you, is also charged with violation of Section 2 of the Sherman Act by reason of alleged monopolization of the bowling center business in five areas:

Poughkeepsie, New York; Paramus, New Jersey; San Juan, Puerto Rico; Pueblo, Colorado and Fort Lauderdale, Florida (through Treadway), the parent company, and Treadway itself, in each of which a bowling center is or was operated by one of the plaintiffs, and one or more bowling centers is or was operated by defendant (except San Juan).

Defendant is also charged with attempted monopolization in these areas, in each of which a plaintiff operates a bowling center, but defendant does or did operate a center, except San Juan and Indianapolis Bowl-O-Mat.

Now, Section 2 of the Sherman Act provides:

> "Every person who shall monopolize, or attempt to monopolize any part of the trade or commerce among the several states shall be guilty of violating the law."

The defendant is also charged with violation

[4658]

of Section 7 of the Clayton Act (15 U. S. C. 18) by reason of defendant's acquisition of bowling centers in Pueblo, Poughkeepsie and Paramus.

Section 7 of the Clayton Act, known as U. S. C. Section 18 provides:

> "No corporation shall acquire, directly or indirectly, the stock or assets of another corporation where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly."

As I told you when this case commenced, the defendant denies all these charges and claims for damages and further alleges that it has not violated the anti-trust laws nor has it caused the plaintiffs any damages. In other words, the defendant states that it has not committed any

act or acts violative of the anti-trust laws nor has it ever attempted to do so.

The Court has separated the following plaintiffs from this case: Saginaw Bowl-O-Mat, Inc., Muncie Bowl-O-Mat, Inc., Score Lanes Bowl-O-Mat, Minneapolis Bowl-O-Mat, Inc. and Des Moines Bowl-O-Mat, as a matter of law, leaving Treadway companies, Inc. on behalf of itself, and Fort Lauderdale Bowl-O-Mat; Holiday Bowl-O-Mat;

[4659]

Paramus Bowl-O-Mat, Pueblo Bowl-O-Mat, Paradise Bowl-O-Mat and Indianapolis Bowl-O-Mat as co-plaintiffs.

In the event repetition is found to exist in this charge, I must ask you to forgive the Court. This is going to be a lengthy charge, and I apologize for it.

When I mention the defendant, I am referring to Brunswick Corporation which includes BCOD, a division of Brunswick Corporation.

Let me clarify the pleadings in this case. Originally, the Complaint alleged three claims for relief. The first claim has been decided as a matter of law. You are not concerned with it at all. You are asked to decide in this case the second and third claims. The second claim charges monopoly and attempt to monopolize. The third claim charges a violation of the acquisition section of the Clayton Act.

[4660]

I emphasize that this action is here in this court only on a charge of violations of the antitrust laws.

You, members of the jury, are the sole judges of the facts. If, in these instructions, any rule, direction, or idea be stated in various ways, or any of the evidence is discussed, no emphasis is intended by me and none must be inferred by you. For that reason you are not to single

out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all of the instructions as a whole and to regard each in the light of the others.

But it is my function and my duty to instruct you, the jury, as to the rules of law that must govern the disposition of this case. You, then, are obligated to take the law from the Court, and to follow the Court's instructions as to the law. You are to analyze the evidence impartially, without prejudice, sympathy or bias for or against the plaintiffs or the defendant.

The term "every person" includes not only every individual, but also every corporation, partnership or other association or organization of every kind and character.

[4661]

A corporation is in law a person, but of course it cannot act otherwise than through its directors or officers or employees, or other agents.

Every act of an agent on behalf of or in the name of the corporation, if done within the scope of the agent's authority, is in law the act of the corporation itself.

I repeat, the claim for damages here asserted by the plaintiffs is based upon the applicable provision of the antitrust laws, which provides:

"Any person who shall be injured in his business . . . by reason of anything forbidden in the antitrust laws may sue therefor . . ."

This statutory provision reserves to any person or corporation a right of action for an injury to business proximately caused by any violation of the antitrust laws. Such a person or corporation may recover damages for the injury to business upon proof by a fair preponderance of the evidence: First, that there has been a violation of

the law; and second, a consequent injury to business of which the violation is the proximate cause.

The term "preponderance of evidence," which shall be used throughout these instructions, means

[4662]

the greater weight of credible evidence considered in its entirety. The number of witnesses called by one party or the other is not necessarily determinative of the weight of the evidence. It is, however, a factor which may be considered by you where the witnesses have had the same opportunity for observation and are believed by you to be of equal credibility.

There are other factors which may and should be considered by you in your determination of the weight of the evidence, to wit, the persuasive quality of the testimony and its probative value. You will appraise the evidence in the light of these several factors in determining what weight, if any, is to be given it.

There is a preponderance of evidence where its persuasive quality is such that it best accords with reason and probability.

Now, as jurors you are the sole judges of the facts of this case. It is for you to determine what those facts are from what you have seen and heard in this courtroom. It is for you to determine where the truth lies. And we all know that in this case we have much conflicting evidence.

In this connection, it is for you to deter-

[4663]

mine also the credibility of the witnesses who testified here in court. And it is for you to determine what weight is to be given to their testimony. Again you have to determine where the truth lies.

So you see that in addition to being the sole judges of the facts of the case you, as jurors, are also the sole judges of the credibility of the witnesses and of the weight that is to be given to their testimony.

I will have more to say about these exclusive functions of yours later in my charge.

Insofar as the law of this case is concerned, I repeat you are dutybound to take the law as I give it to you, and apply the law so given to the facts of the case as you find them. You are not to concern yourself with the wisdom of any rule of law I may give you. Regardless of any opinion you might have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict in this case upon a view of the law other than that given to you by me.

In addition to what I have just stated, there are certain principles of law you must keep in mind and apply in your deliberations in this

[4664]

case.

During the course of this trial you have heard counsel make objections to some of the questions that were put to the witnesses. Objections were also made to some of the exhibits that were offered in evidence. You have seen counsel confer with the Court at side bar. And, of course, what was said there was out of your hearing. You have been excused from the courtroom so that the Court could hear arguments on points of law involved in the case. All these matters, lady and gentlemen, pertain solely to legal phases of the case and do not at all concern your function as jurors.

You are, therefore, not to speculate concerning such matters in your deliberations.

Getting back to your role as the sole and exclusive judges of the facts of this case, please remember and keep in mind, I repeat, that it is your recollection of the facts, and yours alone, that controls. Any comments concerning the facts of this case, whether made by counsel, or by the Court, are not binding on you. They are to be disregarded unless, of course, such comments happen to coincide with your own

[4665]

independent recollection of the particular fact or facts commented upon. Your verdict must be predicated solely upon the evidence as you, and you alone, recall and evaluate it.

You have heard statements made by counsel during the trial. Some of these remarks were made spontaneously in the fervor of a trial. You are not to consider these at all in your deliberations nor are you to draw any inferences for or against the plaintiffs or the defendant because of these remarks.

And in your consideration of the evidence in this case you are not limited to the bald statements made by the witnesses. On the contrary, you are permitted to draw from the facts you find to have been proved such reasonable inferences as seem justified in the light of common sense and your own experience.

An inference is a logical deduction from a proven fact.

Now let us turn to your role as the sole judges of the creditability of the witnesses who testified here. As I had said, it is your function and yours alone, to determine the credibility of the witnesses and of the weight that is to be

[4666]

given to their testimony.

In weighing the testimony of each witness you should consider such witness' relationship to the plaintiffs or to

the defendant. You should consider the witness' interest, if any, in the outcome of the case.

You should consider the witness' manner of testifying and his candor, fairness and intelligence.

And you should also consider the extent to which, if at all, the testimony of any particular witness has been corroborated or contradicted by other credible evidence in the case.

If you believe that a witness has wilfully sworn falsely to a material fact in the case, you may disregard the testimony of such witness, in whole or in part, except insofar as it may have been corroborated by other evidence in the case which has been found by you to be credible.

I repeat, the weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You are expected to use your own good common sense in your consideration of all the facts and circumstances in evidence to determine which of the witnesses are worthy of

[4667]

greater credence.

The purpose of the antitrust laws is to preserve the free flow of commerce and trade among the states, and to secure to everyone an equal right and opportunity to engage in the trade and commerce of the country.

Interstate commerce, as used in the anti-trust laws, means intercourse for purposes of trade in any or all of its forms within the flow of commerce across state lines or, if not within the flow of commerce across state lines, substantially affects such commerce.

For the purpose of this charge, "interstate commerce" and "trade or commerce among the several states" mean the same thing.

In the determination of whether or not interstate commerce is involved or is substantially affected, the exact location of state lines makes no difference, for if the forbidden effects under the antitrust laws flow across state lines to the injury or hindrance of interstate commerce, that commerce is involved.

I also charge you that the term "monopolize," as used in the antitrust laws, refers to the power allegedly obtained and maintained by the defendant

[4668]

for the purpose of removing or excluding competitors from the field of competition in a particular business or industry, in this case, the operation of bowling centers.

In this case the defendant has monopolized within the meaning of the antitrust laws if:

One, it has knowingly obtained or maintained monopoly power to remove or to exclude or keep out competitors from the field of competition.

Two, that the defendant possesses that power.

Three, that it has the purpose and intent to exercise that power to exclude or remove as to cause injury to the business of one or more of the plaintiffs.

Of course, if the power to remove or exclude competitors has been exercised and if, as a result of the exercise of such power, one or more competitors have been removed or excluded, monopolization has clearly occurred; but it is not necessary that competitors actually be removed or excluded from the field of competition if it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred.

[4669]

The term "attempt to monpolize" involves two essential elements:

One, a specific or purposeful intent to monopolize.

Two, some act done in furtherance of that intent, but insufficient to produce a monopoly.

In order to find an attempt to monopolize, both elements—the intent and the act—must appear, and must together result in a reasonable probability that a monopoly will sooner or later occur.

I further instruct you intent is the purpose or aim or state of mind with which one acts or fails to act. A person is usually held to intend to do or fail to do everything such person knowingly does in fact do or fail to do.

It is reasonable to infer also that a person ordinarily intends all the natural and probably consequences of acts knowingly done or knowingly omitted.

So unless the contrary appears from the evidence, the jury may draw the inference and find that a person intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to

[4670]

result from any act knowingly done or knowingly omitted by such person.

An act or failure to act is done knowingly, if done voluntarily and purposely, and not because of mistake or inadvertence or other innocent reason.

[4671]

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case.

One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. As a gen-

eral rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Intent may be proved by indirect evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eye-witness account of the state of mind with which the acts were done or omitted. What a person does or fails to do may indicate either intent or lack of intent.

In determining any issue involving intent, the jury should examine all the facts and circumstances in evidence which tend to shed light on state of mind.

[4672]

Here there may be an attempt to monopolize, without the offender actually having monopoly power.

But an essential element of an attempt to monopolize is a specific intent to destroy competition or build monopoly. Neither rough competition nor unethical business conduct by themselves is sufficient to show such intent. The intent must be both present and predominant and it must be an intent to gain control over some relevant market sufficient to set prices in that market or to exclude competitors therefrom.

It is not necessary to prove defendant's ability to achieve monopoly. You must find specific and a reasonable probability that monopolization will result from the attempt if you are to find that there has been an attempt to monopolize within the meaning of Section 2 of the Sherman Act.

By specific intent, I mean that the defendants must have done certain things with monopoly as their ob-

jective, which, if successfully performed, could result in actual monopolization.

Or, to put it a simpler way, the specific intent I am here referring to in connection with the alleged attempt to monopolize means that the

[4673]

parties did the acts charged intending to attain a monopoly. If you are convinced that the acts were done innocently and without the thought of obtaining or maintaining a monopoly, then there would be no specific intent of the type necessary to find defendants guilty of an attempt to monopolize.

Conversely, if you are convinced that the acts were not done innocently but were done with the thought of obtaining or maintaining a monopoly, then you may find that this "specific intent" was present.

I repeat, intent as used in this charge means a state of mind, and is determined not so much by what one says as by what one does. It is a fact to be proved like any other fact, by acts, conduct and circumstances.

It is not necessary that each specific act be shown to have been committed with the intent to eliminate competition or to enlarge or maintain a monopoly, as in the case of the specific intent required in the attempt to monopolize, but you may look to all of the acts committed within the period claimed and determine whether overall there was a general intent to maintain a monopoly position or

[4674]

to eliminate or forestall competition, and consider that overall picture together with the pattern or design of intent shown by acts and from all of those facts determine the specific intent.

The laws invoked by plaintiff forbid monopolization or attempts at monopolization of any part of trade or commerce among the States.

By the phrase, "any part of trade or commerce" it is meant an appreciable part of interstate commerce. Appreciable is a quantitative test which may be measured in dollar volume as well as industry percentage. You must find involved in order to find a violation of the Sherman Act, that there was interstate commerce since the Sherman Act may only be applied to activities which restrain or affect interstate commerce.

The acts complained of, to involve interstate commerce, may effect a business engaged in interstate commerce or may affect a business operating in intrastate commerce if interstate channels of commerce are used.

Thus, if the parties are involved in the flow of interstate commerce—the movement of goods and services across state lines—or if it affects such commerce significantly, then the Sherman Act

[4675]

applies.

If you find that the conduct here alleged operated directly upon goods in the flow of interstate commerce or that the acts complained occurred wholly on a state or local level, in intrastate commerce, but substantially affected interstate commerce, then interstate commerce exists for the purposes of the Sherman Act.

I repeat, monopolization means the possession of monopoly power by a party or parties through which power it is possible to exclude actual or potential competitors from any part of the trade or commerce among the several states, provided that the party has the intent or purpose to exercise that power. However, the power need not actually be exercised.

Indeed, where there is monopoly power, the wilful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen or historic accident constitutes monopoly. United States v. Grinnell, 384 U. S. 563 (1966).

In order to sustain the allegations of attempt to monopolize or monopolization, charged in the Complaint, it is not necessary that each

[4676]

and every act alleged be sustained or proven. It is sufficient if it is shown by a preponderance of the evidence that the defendants have engaged in conduct violative of the law as given to you.

Size alone is not a violation of the anti-trust laws and it is not conclusive evidence of monopolistic power or position, but is an element when compared with the size of its competitors which may be taken into consideration by the jury in determining the existence of monopoly power.

Now, monopoly power exists where a person possesses the power to foreclose competition or to secure for itself a competitive advantage when it desires to do so. It is not necessary that competition be actually excluded, but it is sufficient that such person or persons possess power to exclude actual or potential competition.

[4677]

The defendant is also charged with a violation of Section 7 of the Clayton Act by reason of the defendant's acquisition of bowling centers in three local areas in which monopolization is also charged. I recall Pueblo, Paramus and Holiday (Poughkeepsie). This is known as the acquisition charge.

I now turn to the charge of acquisition made by the plaintiffs against the defendant, which is known as Section 7 of the Clayton Act, to which I have referred heretofore.

As you know, this is a civil action for the recovery of money damages. In order to recover such damages on the acquisition phase of the case, the plaintiffs must, under the applicable law, prove four elements:

One, that the defendant violated Section 7 of the Clayton Act;

Two, that the plaintiffs have been injured in their business or property;

Three, that the antitrust violation was the direct and proximate cause of the injury to their business or property;

And four, that they or any one of them has been damaged in an amount which is reasonably

[4678]

ascertainable in dollars and cents.

As I previously instructed you, Section 7 of the Clayton Act provides that no corporation engaged in commerce shall acquire the whole or any part of the assets of another corporation also engaged in commerce where in any "line of commerce" in any "section of the country" the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.

There are three elements involved in determining whether defendant violated Section 7 of the Clayton Act:

One, determination of the relevant line or lines of commerce—the product market. The term "product market" includes a service market as well as a product market in which the parties compete;

Two, determination of the relevant section of the country, the geographic market;

And three, determination of the likely anticompetitive effects of the acquisition of bowling centers in the relevant local market.

Section 7 of the Clayton Act is directed toward the preservation of competition and compe-

[4679]

tition can be measured only within the confines of an economically meaningful market.

In this case, you are concerned with the local markets of Pueblo, Colorado; Poughkeepsie, New York; Paramus, New Jersey, as far as the alleged violations of Section 7 of the Clayton Act are concerned.

You must decide whether the effect of the acquisition of bowling centers by Brunswick may be substantially to lessen competition or tend to create a monopoly in that "line of commerce" and "section of the country."

The determination of this question will establish whether or not this acquisition was a violation of Section 7 of the Clayton Act.

This determination must be made in light of several factors: the primary index of legality is the market share of the acquired and acquiring companies and the extent of concentration in the industry.

An acquisition which produces a firm controlling an undue percentage of the relevant market and resulting in a significant increase in concentration is presumptively unlawful, unless the defendants can overcome this presumption by

[4680]

other evidence to establish the vigor of competition or affirmative justifications in support of the acquisition.

While market shares are not determinative of legality of an acquisition, I instruct you that high market shares and significant increases in concentration may be sufficient in itself to establish a violation of Section 7. Section 7 of the Clayton Act may be violated either by showing a reasonable probability of a substantial lessening of com-

petition in the future or by showing a substantial lessening of competition which has already occurred.

It is a plaintiff's burden to establish that whatever injury they claim to have suffered is the direct and proximate result of such violation of law, if any, which you may find—namely, that they were injured by the actual or by the probable lessening of competition.

You are further instructed that the mere acquisition by one corporation of the assets of another, even though it results in some lessening of competition, is not forbidden; the Clayton Act prohibits only such acquisitions as in reasonable likelihood will result in a substantial lessening

[4681]

of competition in the relevant market.

If you find that the acquisition in question violated Section 7 of the Clayton Act, you must next determine whether plaintiffs have met their burden of proof in establishing by a preponderance of evidence that they have suffered actual economic injury.

Under the law, there is a clear distinction between the measure of proof necessary to establish the fact that the plaintiff has sustained some damage and the measure of proof necessary to enable you to fix the amount of the damage. The fact of injury must first be established before you can estimate the amount of damage.

The burden on plaintiff in proving the fact of injury is more stringent than that in proving the amount of damage. The fact of injury caused by the violation must be established by plaintiff with reasonable probability.

If you find that defendant violated Section 7 of the Clayton Act and that plaintiff was injured in his business or property, you must next determine whether the antitrust violation was the direct and proximate cause of the injury to plaintiffs' business or property.

[4682]

If the damage was merely incidental or consequential, or if the defendant Brunswick's antitrust acts are so removed from the claimed injury as to be only remotely causative, then plaintiff has not been injured by reason or anything forbidden in the antitrust laws.

In other words, it is not sufficient that plaintiff may have sustained some injury; he must show that the injury was caused by defendant Brunswick's unlawful acquisition and would not have occurred but for the acquisition.

I further instruct you that acquisitions normally violative of Section 7 of the Clayton Act are allowable when the company taken over is a "failing company." Such a company is one, which the evidence shows, "is in such straits that the termination of the enterprise and the dispersal of its assets seems inevitable unless a rival proprietor shall acquire and continue the business."

If it is found by you, the jury, that the acquired corporation's resources are so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure with resulting loss to its stockholders

[4683]

and injury to the communities where it was located, then it is a failing company.

However, it is for the jury to determine whether defendant's acquisitions were "failing companies" as defined above.

Likewise, the jury must also find, if the defense is to apply, that the acquiring company is the only available purchaser. If another group or person would or could have purchased the company and was pre-empted, then the defense must fail.

Thus in order to invoke the "failing company" defense it must be shown that (a) the acquired company was failing, and that (b) there were no other available purchasers.

The burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it, in this case Brunswick.

Before proceeding any further, let me review summarily the plaintiffs' and defendant's cases. I will refer to the various witnesses' or some of their testimony in capsule form.

I again caution you that you, and you alone, are judges of the facts and you are not bound by my recollection of the testimony. It is your

[4684]

recollection of the testimony and yours alone that controls. Nor is it my intention, and I so caution you, that I do not emphasize directly or indirectly any witness' testimony.

The first witness for the plaintiffs was Daniel Parke Lieblich, president of Treadway, successor to National Bowl-O-Mat, a former plaintiff in this action. For the sake of brevity, I will refer to these various bowling centers by the name of the locality in which they are located and/or center name.

He testified that Treadway was the parent company of Pueblo, Paramus, Holiday (Poughkeepsie) and Paradise (San Juan), and that the parent company operated bowling centers in Indiana, Michigan, Minnesota and Iowa. They also once owned a center in Fort Lauderdale, Florida, but lost it.

He then testified as to the opening of the center in Pueblo, Colorado, by Treadway's predecessor National Bowl-O-Mat, and the experiences his company had there.

He then stated what the bowling center business consisted of: charging a fee for the use of the lanes, rental

being based on the number of lines bowled; the rental of bowling shoes and

[4685]

balls; a snack bar; a pro shop for the sale of bowling supplies; operation of a cocktail lounge and what has been described as vending and miscellaneous machines.

He then told about where a bowling center may derive its customers, by travel time. He also discussed the promotion and formation of leagues for men, women and children.

He also stated how the defendant Brunswick acquired and presently operates Belmont Lanes in Pueblo which competes for customers with Pueblo Bowl-O-Mat.

He testified that Brunswick is the largest manufacturer of bowling supplies in the world and manufactures 50 per cent of the automatic pinsetters sold in the United States and a competitor of Brunswick manufactures almost 50 per cent of automatic pinsetters produced in the United States, namely, American Machine & Foundry.

Brunswick also engages in the business of financing the equipment of bowling centers, including the purchase of pinsetters and lanes in interstate commerce and Puerto Rico.

In his testimony he stated that the following acts have been committed by Brunswick, that it,

[4686]

Brunswick, has achieved, maintains and exercises power to fix and control prices charged for the use of bowling lanes in each of the markets of parts of commerce at or near the various centers, namely, Pueblo, Paramus, Holiday (Wappingers Falls) and Fort Lauderdale, and has achieved and maintains and exercises the power and ability to exclude

competitors from said markets or parts of commerce in unlawful monopolization of said market.

I recall National Bowl-O-Mat lost Fort Lauderdale.

Mr. Lieblich testified that Brunswick discriminated against the Bowl-O-Mat plaintiffs by:

A, granting forbearance of debt to centers indebted to Brunswick and not to plaintiffs or some of them.

B, by the granting of favorable credit terms to plaintiffs' competitors causing plaintiffs to default in their obligation, so that Brunswick could take over the bowling center of plaintiffs, thereby monopolizing the market.

C, Brunswick charges low rentals and offers inducements to bowlers in their center with the purpose of weakening and excluding competition in

[4687]

the markets in which Brunswick operates bowling centers.

D, Brunswick was in a better financial condition to absorb losses in its centers and does not have to close these centers.

E, Brunswick owns the A-2 pinsetters and uses them in its centers, and their competitors cannot afford to do this.

F, Brunswick enjoys commercial advantages to the detriment of these plaintiffs.

G, the witness also stated that the defendant has attempted to monopolize market parts of commerce in various sections of the country.

He then testified as to the acts and/or omissions committed by Brunswick in Paramus Bowl-O-Mat, Paramus, New Jersey; Holiday Bowl-O-Mat, Wappingers Falls, New

York; Paradise Bowl-O-Mat, Puerto Rico; Pueblo Bowl-O-Mat; and what took place in Fort Lauderdale.

He used charts and summaries to testify as to what he considered the losses suffered by these four Bowl-O-Mats.

He also stated that the parent company, Treadway, lost approximately $41,000 in interest because of refinancing it incurred at the demand

[4688]

of the defendant to the detriment of Indianapolis Bowl-O-Mat.

I recall the parent company had to enter into an additional guarantee also.

He also testified as to the interest losses suffered by Treadway when it had to refinance to pay off its indebtedness to Brunswick.

The next witness for the plaintiffs was Senor Gonzalez of Puerto Rico, manager of Paradise Bowl-O-Mat for two years.

He related the bowling center conditions in Puerto Rico, particularly as far as Star Lanes was concerned. Star was financed by Brunswick and Star competed unfairly with Paradise. If Star had shut down, Paradise's business would have risen about $90,000, he said.

The Court then permitted the reading of Christie Vitolo's testimony. I recall he sold a center to Bruno that he bought at a bankruptcy sale of AIBC's equipment.

The next witness for the plaintiffs was William Kenney, manager for Treadway. He supervised several centers in the midwest.

He testified about the events in Pueblo and what happened to Pueblo when Belmont Lanes opened,

[4689]

equipped and financed by Brunswick, and how Pueblo lost money when Belmont opened and while it was operating. If Belmont had closed in 1965, he stated, Pueblo Bowl-O-Mat would have benefitted up to $90,000.

On cross-examination he admitted that Pueblo enjoyed a competitive advantage over some centers because of its appearance; it had a late liquor permit; a bus to transport school children to the lanes; a large meeting room, and a nursery which the other centers did not have.

He then stated again, if Belmont had closed in 1965 instead of Brunswick taking it over, 65 to 70 per cent of the bowlers would have come to Pueblo Bowl-O-Mat based on his experience. In 1969, he stated that in his opinion, Belmont did not have the power to exclude bowling centers and that there is nothing wrong for bowlers to leave Pueblo, go to Belmont, and return to Pueblo. This is competitively acceptable.

If Belmont had closed in 1967, he opined, Pueblo would have received about $80,000 of this Belmont business, applying a 70 per cent factor—20 per cent to Bolero, a small per cent lost and the balance would go to Park and Payne lanes.

[4690]

On redirect examination, he stated if a regular competitor came in, he would not have the resources of Brunswick. Brunswick also had the power to fix prices.

The next witness for the plaintiffs was Milton Mendelson, now the manager of Paramus Bowl-O-Mat, Paramus, New Jersey. He spent practically all of his adult life in the bowling business, as an entrepreneur, an employee of Brunswick and of National Bowl-O-Mat. He recited the history of the bowling center business for the past 20 years.

He then narrated his experiences with National Bowl-O-Mat as far as Holiday Bowl-O-Mat was concerned, and the effect of Brunswick taking over Dutchess Lanes for a period of time; the effect that Brunswick's taking over or opening centers in Lodi, Ramsey and Fairlawn had on Paramus Bowl-O-Mat; the effect of Brunswick operating Star Lanes in Puerto Rico had on Paradise Bowl-O-Mat—placing Paradise on a cash basis—and the effect Belmont Lanes, Brunswick, had on Pueblo Bowl-O-Mat.

He stated that the manufacturing costs of a pinsetter in 1962 was approximately $2200.

[4691]

On cross-examination he stated that he did not know what manufacturing costs included on the part of Brunswick. He did not know of any league, team or bowlers that Treadway lost nor of trips being offered to Europe by Ten Pins Center or Fair Lawn Center, competitors of Paramus.

Three years ago he testified that Holiday (Wappingers Falls) would benefit to the tune of $30,000 to $35,000 a year if Brunswick had closed Dutchess Lanes in 1969.

He now states that that estimate was conservative. He now testifies that Holiday would benefit to the tune of $100,000 to $120,000.

If Ten Pins Center, Brunswick, closed, Paramus would get 75 to 80 per cent of the business.

If Lodi Center, Brunswick, closed, Paramus would get 35 to 40 per cent of the business.

If Fair Lawn closed, Paramus would get 75 per cent of the business.

If Interstate, Brunswick, closed, Paramus would get 40 per cent of the business.

Then on redirect examination he stated that when he estimated the manufacturing costs at $2200 for a pinsetter, he was not testifying as

[4692]

an accountant.

In his opinion, Bowl-Your-Way-to-Europe, a promotion of Brunswick, was a competitive advantage for Brunswick.

On recross-examination, it was developed that one man and one woman won a trip to Europe from a Ten Pins Center tournament in a year.

Plaintiffs then read the testimony of Benjamin E. Bensinger, Chairman of the Board of Brunswick Corporation, and also a portion of his depositions.

The next witness for the plaintiff was Rex Martin Golobic, president of the Bowling Proprietors Association of America and owner, as I recall, of three bowling centers in the San Francisco area.

He testified to a resolution being passed in San Juan, Puerto Rico, in which the bowling operators expressed grave concern over the incursion of Brunswick Corporation into the bowling center operation and are still concerned. He then stated that Brunswick had not hurt him yet in his bowling center operations, but he is concerned about the future.

The deposition of Mr. Hanigan was read. He was president and chief executive officer of

[4693]

Brunswick Corporation at that time.

The plaintiffs then read portions of depositions of James Hanigan, president and Chairman of the Board of Brunswick.

The next witness for the plaintiff was Reuben Dankoff, president of General Bowling Corporation, who has been in the bowling center business since 1955.

I recall he testified that he was interested in purchasing a center known as Moffitt Lanes in Brooklyn; which center was indebted to Brunswick, being behind two months in payments, and there was also a provision between the original parties that Brunswick had to approve any sale and transfer.

He stated that he met with Mr. Frecker, an officer of Brunswick, and that he wanted to assume the outstanding obligations of Moffitt Lanes.

Frecker said that Brunswick had new guidelines and there would have to be a larger down payment to close this transaction. The witness offered to buy Moffitt stock but Moffitt declined.

He then learned that Brunswick bought Moffitt and one and one-half years later closed it.

In November 1964 the witness' company tried to buy Royal Lanes in West Hempstead, Long Island,

[4694]

a Brunswick lane, and also Elmont Bowling Center. This had Brunswick pinsetters but was not a Brunswick lane. Mr. Frecker of Brunswick said Brunswick was not interested in Elmont as an operator and as to Royal Lanes, he stated that Brunswick would operate it as part of a chain. Brunswick did not acquire Royal Lanes for one year and he, the witness, decided to purchase Elmont.

He then stated that he met Mr. Frecker in Puerto Rico at a convention and discussed the purchase of Roosevelt Lanes. He stated that he had an appointment to purchase the same, subject to Brunswick's approval.

Mr. Frecker said that Roosevelt was a bad center, should not have been opened, that Brunswick had many commitments with other customers in the area, that we, Brunswick, would close it.

Shortly after, Brunswick took over Roosevelt and another lane in another center, Americana, owned by Roosevelt. Brunswick operated Roosevelt until 1969 at a loss and is still operating Americana.

He then stated that he tried to purchase Sunset Lanes in Deer Park, Long Island, after Brunswick purchased it from Mr. Vitolo. He spoke

[4695]

with Mr. Rudo of Brunswick and also was told that none of AIBC centers could be purchased.

He then testified as to his experiences in Long Island between his center, Viking Lanes, and Sunset Lanes, Brunswick. He stated that his center could not meet the inducements offered by Sunset Lanes which was owned and operated by Brunswick.

He stated that Brunswick operated a River Bowl center in Maryland and that the manager tried to lure away two of his managers in Virginia, which necessitated his giving more money to his managers.

He then discussed circulars sent out to secretaries of bowling leagues requesting that they try to convince bowling center operators to purchase A-2 pinsetters, which Brunswick had just put on the market.

I recall that he testified that his centers could not compete with Brunswick, not only because of inducements Brunswick centers offered, but because of Brunswick's reducing its prices for bowling. "If I did," he stated, "we could not make a fair margin of profit."

He then discussed a resolution passed in Puerto Rico in 1965.

[4696]

I recall he then testified as to his experiences in operating other bowling centers in Long Island.

Plaintiffs then completed the reading of Mr. Hanigan's testimony and also that of Mr. Milton Rudo, both officers of the defendant company.

The last witness for the plaintiff was Mr. Richard A. Davis, who has been in the bowling center business for many years, presently employed by Treadway, parent company of bowling centers owned by it.

I recall he related his experiences with regard to a center in Freeport, Long Island; West Boyleston, Massachusetts; Brooklyn, New York; Framingham, Massachusetts; and Astoria, Long Island.

He then testified as to his experiences in operating the West Malton Lanes in West Boyleston, Massachusetts in competition with Lincoln Lanes, a Brunswick center.

He also stated that he had visited three bowling centers in New Jersey, which contained AMF equipment which Brunswick owned and operated.

I recall he then testified as to how he and Mr. Lieblich prepared P-53 in evidence, which

[4697]

sets forth the damages allegedly suffered by four of plaintiffs' centers based on acts of this defendant.

On cross-examination, he admitted that Treadway was enjoying an upswinging business and that the long-term debt for equipment had been paid off, that the bowling business operation had generated a good cash flow, net worth is over five million dollars. He complained primarily about price cutting.

Mr. Seeley read Mr. Hanigan's speech delivered in San Juan, Puerto Rico, setting forth Brunswick's 14 points.

The first witness for the defendant was John A. Barron, a career man with the Brunswick Corporation, presently assistant comptroller, who was familiar with all of the company's records.

He testified about the figures and graphs contained in defendant's exhibits relating to pinsetters and lanes repossessed. He then described the figures contained in a number of exhibits which you will have with you in the jury room.

He also discussed the operation of BCO, an operating division of Brunswick, and its relation

[4698]

to Brunswick.

He then testified as to proposed allocation of principal and interest to bowling center operations, but admitted this chart was prepared for this litigation, and that it was Brunswick's policy not to assign interest to bowling centers for administrative purposes.

In 1972 there were 8,818 centers in the United States and BCO operated 168 of them. In 1961 Brunswick had liens on 56,180 pinsetters. In 1972 Brunswick had liens on 9,852 pinsetters.

On cross-examination he admitted no centers were sold in 1965, but a few had been sold in the last few years and that the proceeds of sale, lease or deactivations of centers were not included in the charts.

The next witness for the defendant was Milton Rudo, an officer of the company. He stated that when the repossession started in 1964, an evaluation team was sent to the centers to see whether they could be viable.

There was a single price for pinsetters and lanes and finance charges were the same for all customers.

In 1965 Brunswick took over 124 centers,

[4699]

3000-plus lanes, 3600 pinsetters went into warehouses and he received the 14 points from their counsel. A training program was instituted.

He admitted the operation of numerous centers by Brunswick company, some of which had AMF equipment; Brunswick company also had management contracts.

Their advertising expenses cost about 3 per cent, including trophies, Bowl-Your-Way-to-Europe and youth programs. Brunswick company charges the same lineage as the area charges. They have never lowered prices; they honor league contracts, they have adhered to the freeze prices. Ten Pins on the Mall, Fair Lawn, Lodi, Interstate have not lowered prices nor did Belmont or Dutchess when it was in operation.

He then testified as to his negotiations with Mr. Dankoff about Moffitt Lanes in Brooklyn.

In 1970 Brunswick company operated 169 centers and in the United States there are about 9500 centers. Since 1966 nine centers have been sold and two have been leased by Brunswick company. All are still for sale, if the price is right. Since Brunswick company has taken over the centers, it has had a $22 million cash

[4700]

flow. Since 1969, Brunswick company has opened seven new centers with an investment of about $6 million. All used pinsetters, some used lanes. They plan to build four or five centers a year.

Many centers compete with Brunswick company throughout the country and he stated that Brunswick sells them equipment. He then testified as to how Brunswick company acquired Belmont contrary to Mr. Lieblich's advice in 1965 from the former owner. Brunswick company did not want to injure Pueblo Bowl-O-Mat when they took over Belmont, he said.

He then testified as to what happened in the Fort Lauderdale area with Imperial-Dolphin and Fort Lauderdale Bowl-O-Mat.

In his opinion competition is a minor problem; keep the centers clean, good promotion, work at it.

He then related what happened in Poughkeepsie with Dutchess Lanes, finally sold by BCO.

He stated Interstate and Fair Lawn have been profitable, both are for sale. He stated that this center was offered to Mr. Lieblich but he ignored it.

Brunswick company's selling price formula was, take the cash flow and revenue, project it for ten years, increase by 3 per cent, discount

[4701]

the money times 5.9, gives you the selling price.

He also described the negotiations with Mr. Lieblich in 1964, when Treadway's loans were renegotiated and a parent guarantee was insisted upon, with add-on interest, by Brunswick. He said Great Lakes Bowling Center received the same guarantee.

Finally, he stated that Brunswick company operates centers to make them a viable business so they can be sold. Brunswick company doesn't charge lower prices. Their rentals are competitive, he says. Brunswick company does not want to weaken or exclude competition.

On cross-examination he admitted that Brunswick company has 60 salesmen, but they have only sold nine centers in the 60-lane class, none in the 40-lane class.

He then testified about the lease-management contract with Rahway Recreation Center. I recall, he then testified that Brunswick is not interested in purchasing any bowling centers and that the Rahway option to purchase was a mistake. On April 12, 1973, three years after contract was signed, Rahway's option to purchase was cancelled he says, because the lawyer made a mistake.

[4702]

He admitted that several centers managed by Brunswick Company do not receive management fees. After rent is paid, Brunswick company receives the profits.

He stated that before Brunswick opens a center, they consider their relationship with customers, although leases have been entered into, without contacting some other party to see if they were interested.

Before Belmont was acquired they relied on legal advice because of the antitrust laws. In California, the legal department advised against acquiring a center because of recent acquisition in the area. We are advised that 25 per cent of a market was not a monopoly, he stated. In Belmont, the owner failed and we had to repossess.

The next witness for the defendant was Frank Esposito who owns Paramus Bowling Center, with AMF equipment in it. He testified that he would sooner compete with Brunswick than any other competitor. He stated that fair competition keeps people bowling, advertising would be competitive. Brunswick, he says, meets that competition.

On cross-examination he testified as to how

[4703]

he operates his center so successfully: clean, nursery for children, promotion of leagues, prizes.

The next witness for the defendant was Bernard Rudo, brother of Milton Rudo, vice president in charge of operations.

He testified as to conditions in Broward County, Florida—Lauderdale and surrounding area,—and also in Bergen County, New Jersey—mileage and also size of centers.

He was formerly president of A. I. B. Company which went into bankruptcy and he took over 26 of these centers

in the country for Brunswick. He joined BCOD in March 1965. All AIBC Company prices were maintained or raised, never lowered.

He then testified about promotional activities conducted by BCOD, particularly with reference to Sunset Lanes' activities and Airborne's leagues on Long Island.

I recall he said he was confused about certain testimony he gave one day, but then upon reflection he did remember the contracts between Sunset Lanes and Airborne Industries Laboratories.

On cross-examination, he testified about a voting trust agreement that AIBC company had entered

[4704]

into; Brunswick being a party thereto. Before bankruptcy Brunswick was owed $10 million by AIBC company. 26 centers were involved.

He also admitted that when he discussed prices for Sunset, he did not consider free games offered by Brunswick Company, for example, breakfasts in a California center or free rental of bowling shoes.

He then stated where all AIBC company centers were located throughout the country and the population of the particular area, and outside of one community, Brunswick company owns 100 per cent of the market in Indiana.

The next witnesses for the defendant were:

Kenneth Brooks Abernathy, president, Brunswick corporation;

Ernest J. LaFroscia, a former employee of Airborne Instruments Laboratory;

Joseph A. Rice, corporate credit manager;

John Hanigan, Chairman of the Board of Brunswick.

The defendant also produced as rebuttal witnesses:

Mr. Kenney, who testified heretofore. He is the regional manager of the midwestern area for

[4705]

Treadway;

Mr. Davis, who testified heretofore. He is the Director of Bowling Operations for Treadway;

Mr. Lieblich, president of Treadway Companies, Inc., former witness in this case.

There is no necessity for this Court to repeat any of their testimony. You have heard it all within the past week and I am sure that your recollection of the testimony is as good, if not better, than this Court's.

[4706]

During the trial there were admitted in evidence certain exhibits which have been referred to as charts, graphs, maps, pamphlets, reports, schedules and/or summaries.

These exhibits are not in themselves independent proof. They purport to be only pictorial or graphic representations or resumes of information or data set forth in the testimony of a witness or in documents that are exhibits in evidence.

You may rely on charts and summaries introduced by the parties as showing the truth of the matter represented therein, giving them as much effect as is given to any other evidence.

These charts summarize data introduced into evidence and are designed to make the more complex underlying materials more easily understandable without changing them in any way.

If the information contained in the records or in the testimony is then converted into a visual or graphic form and the chart or summary or map or graph is marked as an exhibit, the chart or summary or map or graph does

not have any independent value as proof because it is only based upon the testimony or the records.

[4707]

It is a visual aid just to help you understand what is in the records and what is in the testimony so therefore you will understand that charts, graphs, summaries, schedules and maps are not by themselves independent evidence.

The Court has asked questions of some of the witnesses during the trial. This was strictly for the Court's benefit. The Court intended no emphasis on any testimony that it asked questions pertaining thereto.

You are not to draw any inferences for or against any of the parties because of the interrogation by the Court during this trial.

The Court has been presented with certain requests to charge by the plaintiffs and the defendant. Some I will grant. Some I will decline, either because they are in my regular charge or I do not deem them as being relevant to this cause of action.

The requests that I shall grant are to be considered by you, members of the jury, with this entire charge.

You are to draw no inferences for or against any of the parties because I have declined to grant certain requests.

[4708]

As to the plaintiffs, I will charge the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions.

An exception to this rule relates to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant

and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves.

If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

During the trial of this case certain previous testimony has been read to you, by way of deposition or otherwise. The testimony of a witness who for some reason cannot be present to testify from the witness stand is usually presented

[4709]

in writing under oath. So, too, one party may rely upon the prior depositions of the other party.

Such testimony is entitled to the same consideration and, insofar as possible, is to be judged as to credibility and weighed by the jury in the same way as if the witness had been present.

It is therefore clear that it is the philosophy of trade in this country that businesses, both large and small, shall be conducted pursuant to certain basic rules of fairness.

It is that philosophy that business shall be competitive, that men may invest their money in legitimate activities, and that in business they will compete with each other as to quality of goods, as to prices, as to service and as to various other matters, but, again, according to rules of fairness—most importantly, the rule that the strong may not prey on the weak.

The antitrust laws also protect the public at large against the evils incident to the restriction of competition by striking down and outlawing monopolies or other aggregations of capital which tend unduly to interfere with the free exercise of the right of those engaged or desiring to engage in such trade or commerce.

[4710]

The antitrust laws protect against those who monopolize trade or commerce, those who attempt such a monopoly, or those who acquire other companies with the result that competition is substantially lessened or that a monopoly is created or tended to be created.

There are three essential aspects of the case which you must consider: First, whether there was a violation of the Sherman Act or Clayton Act or both acts;

Second, whether, if such a violation occurred, it was a proximate cause of damage to one or more of the plaintiffs;

And third, the amount of such damage.

An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case that such act or failure to act played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of such act or failure to act.

An injury is proximately caused by an act or failure to act whenever it appears that the injury was either a natural or a reasonably

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probable consequence of such act or omission.

If you have found that there was a violation of the antitrust laws and that the violation caused plaintiffs injury, you will have to determine to what extent the consequences which befell the plaintiffs were attributable to the wrongdoing of the defendant.

This question of extent of injury deals with the amount of damages, and I shall return to that question later on in these instructions.

I repeat, plaintiffs' second claim which is before you in this case is based upon Section 2 of the Sherman Act.

There plaintiffs' position is that Brunswick has monopolized or attempted to monopolize the business of operating bowling centers by expanding from Brunswick's original business of manufacturing, selling and financing automatic pinsetters, lanes and other bowling equipment into the new business of operating the bowling centers themselves in competition with Brunwick's own customers, namely, independent bowling centers such as plaintiffs'.

It is plaintiffs' further position that Brunswick operated many of its bowling centers at a loss, including Brunswick centers which are direct competitors of plaintiffs' own centers.

[4712]

I am going now to begin talking to you about the words "monopolize" and "attempt to monopolize" which appear in Section 2 of the Sherman Act. And you will note, first, that the word "monopolize" is a verb and not a noun. That is, the statute is directed at one or several people who monopolize or attempt to monopolize. It is not directed in terms of a monopoly, and certainly is not directed at what laymen ordinarily talk about as a "monopoly." You may start with the notion that anybody who has 100% of the business is a monopoly. But that would be the wrong approach in connection with this statute. As here used, the verb "monopolize" means to acquire the

power in the marketplace to exclude actual or potential competition, and to follow such a course of conduct with the intent of monopolizing.

It would be a violation of the law, and it would be a prohibited monopolization, for a person or group of persons to seek to secure a dominant share of the market through a a restraint of trade which was prohibited, or through a predatory practice, or through the bad faith use of otherwise legitimate devices. It would be a prohibited monopolization, for example, if a person or group of persons used their power to foreclose on loans, not with the intent of forwarding

[4713]

their banking or credit or other legitimate business interests, but with the purpose of stifling actual or potential competition. That is to say, it would be unlawful for a person or group of persons to agree to take steps which were directed at excluding actual or potential competition with the intent of accomplishing that particular result, rather than with the intent of doing something innocent to further their general credit, banking or like policies.

Now, this word "monopolize," as used in Section 2 of the Sherman Act, has two elements: (1) the acquisition of monopoly power in a relevant market, and (2) the maintenance of that power, as distinguished from lawful internal growth or development of a superior product, business acumen or historic accident. Thus monopoly power may be found by you to exist if you find that Brunswick had the power to control prices or the power to exclude competition.

Monopoly power, whether lawfully or unlawfully acquired, may violate Section 2 of the Sherman Act though it remains unexercised, since the existence of power to exclude competition when it is desired to do so is in itself a violation of Section 2, provided it is coupled with the purpose or intent to exercise that power.

It is nonetheless wholly proper for you to

[4714]

consider any evidence which shows that Brunswick again and again and again exercised its monopoly power to exclude competition. Moreover, when a monopolist exercises its power to exclude competitors, it is not necessary to find a specific intent to monopolize, but rather . . . the defendant would be liable for the natural and probable consequences of his acts.

Where a defendant possesses the power to exclude competition or to secure for itself a competitive advantage when it desires to do so, it is deemed to possess monopoly power. It is not necessary that competition actually be excluded, but it is sufficient that such defendant possess power or ability to foreclose or exclude actual or potential competition if and when it decides on its own to do so. You may find that Brunswick intended the normal consequences of the business arrangements which it entered into. It is not necessary to find that Brunswick intended to injure plaintiffs or anyone else in order to find illegal monopolization. This is because "no monopolist monopolizes unconscious of what he is doing."

You will recall that I have read to you a law which states that a person or persons should neither monopolize nor attempt to monopolize. And the complaint which is before you uses both the verb

[4715]

"monopolize" and the longer phrase "attempt to monopolize." In order to show a violation of the law and thus allow recovery of damages, it is not necessary that the

plaintiff show you that there is an achieved or completed monopolization. It is sufficient for recovery that plaintiff shows an "attempt to monopolize."

Brunswick is charged with attempting to monopolize the business of operating bowling centers. An attempt to monopolize involves the employment of methods, means and practices which normally move towards monopolization, and which, although falling short of monopolization, create the reasonable probability that monopoly will be achieved. In order to find Brunswick liable for an attempt to monopolize you must find that Brunswick employed such means and that it had the purpose to achieve or build a monopoly. In order to be liable for an attempt to monopolize it is not necessary that the acts or practices of defendant shall actually result in monopolization.

"Attempt to monopolize" means to take steps toward acquiring a dominant position in the market, and to take such steps without special permission at law as in the case of a patent, where there is a public interest in protecting inventions, or in the case of a

[4716]

public utility—which is a lawful monopoly licensed by the government—where there is an overriding public interest in the providing of indispensable services as efficiently as possible. The intent required means only the intent to enter into business arrangements which can be expected to result in exclusion of others from the market. It is not necessary that the intent be to injure plaintiffs or anybody else.

In this case, you have the evidence of the defendant's acts, and its explanation of them. If you find that the defendant knowingly did acts of attempted monopolization which the law renders illegal, you must determine the intent of defendant in doing them, from the acts themselves

and their natural and foreseeable legitimate consequences and all other evidence before you.

You may find that Brunswick intended to acquire other companies and intended the business arrangements it entered into. The intent required means only the intent to enter into business arrangements which can be expected to result in exclusion of others from the market. It is not necessary to find that Brunswick intended to injure anyone in order to find illegal attempted monopolization.

[4717]

The intention needed to prove the wrong of attempted monopoly is merely the intention to do the acts which tend to create a monopoly. To find that Brunswick attempted to achieve an illegal monopoly, it is not necessary to find that Brunswick intended to injure anyone. You must ask yourself why Brunswick maintained numerous bowling centers for every year of operations at a loss. If you find that Brunswick maintained these numerous centers in order to have a dominant position in the operation of bowling centers at the time when the market improved, then you may find that Brunswick intended to attempt to monopolize the business of operating bowling centers either regionally or nationally.

Thus the evidence of Brunswick's losses each year on numerous bowling centers, including BCOD centers which are direct competitors of some of the plaintiff bowling centers, bears directly on the plaintiffs' charge of attempt to monopolize as well as their charge of monopolization. As concerns both charges, it is highly relevant to note that sales below cost made for purposes of eliminating a competitor or of forcing sales by a competitor or competitors at comparable prices frequently have been cited as traditional examples of violation of the Sherman

[4718]

If you find that Brunswick operated BCOD centers at a loss in one or more of the local markets, you may properly find a national monopoly. Because of its national operations, Brunswick was able in many areas to operate at a loss. Operations at a loss in one or more local markets prove that Brunswick enjoys national monopolistic power. Such operations at a loss would not be possible for any independent bowling center and permit Brunswick to extend Brunswick's national monopolistic control to each such market. Hardly any indicium of monopoly power is more persuasive than the continued capacity of a national business to sustain operations at a loss either in particular areas or in particular services or products.

[4719]

You may find that Treadway, and its subsidiary, Indianapolis Bowl-O-Mat, were forced to make banking arrangements because Brunswick, exercising its national monopoly power discriminatorily, demanded payment of the entire Treadway chain indebtedness and would only extend the term of that indebtedness on unfavorable credit terms unfavorable to and discriminatory against Treadway, and its subsidiary, Indianapolis Bowl-O-Mat.

You may properly consider, in your deliberations, whether or not Brunswick's "deep pocket" enabled it to enter the bowling center market which, the evidence shows, was previously occupied by relatively small companies and whether or not that ability opened the possibility and power to sell at prices approximating cost or below and thus to undercut and ravage the less affluent competition.

You will recall that when I read the statute I referred to the phrase "any part of the trade or commerce among the several states."

For the purposes of the statute and for the purposes of this Complaint in this case, any part of the trade or commerce means any identifiable

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segment of trade or industry which constitutes, as it were, a kind of separate market, to use a technical economic term.

You must direct your finding as to monopolization to the issue of whether or not Brunswick had the power to fix prices or exclude competition.

There is no support in the law for Brunswick's argument that its supposedly "insignificant" percentage participations in the national market and in the local markets in Pueblo, San Juan, Poughkeepsie, Paramus and Fort Lauderdale refute that it can act as a monopolist or attempt to achieve a monopoly in any of those markets.

If you find that Brunswick was able, by enforcing some credit obligations and forbearing on or forgiving others, to determine which independent bowling proprietors would survive and which would not, then you may find that Brunswick enjoyed the power to exclude competition and had an illegal monopoly or attempted to achieve one either regionally or nationally.

You should consider in this respect Brunswick's enforcement of some credit obligations and not others in the following areas: Pueblo, Colorado; Fort Lauderdale, Florida; and

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San Juan, Puerto Rico.

If you find that Brunswick, because of its combined role as a manufacturer of bowling equipment, the financier of its customers and an operator of bowling centers,

used this combined position to pick and choose among its bowling center customers as to which customer would be permitted to continue and which customer would be forced out of business, then you may find that Brunswick enjoyed an illegal monopoly in the national bowling center market.

If you find that Brunswick's dominant position in the bowling industry conferred upon its BCOD bowling centers monopoly advantages not enjoyed by competing independent proprietors, then you may find that Brunswick monopolized or attempted to monopolize the bowling center business.

You may conclude that such monopoly advantages exist from evidence showing that Brunswick's centers, unlike their independent competitors, paid no interest on its lanes and pinsetters and incurred depreciation charges which were approximately half of those incurred by independent proprietors.

You should also consider the evidence which

[4722]

shows that Brunswick's centers, unlike their independent competitors, could and did underwrite the costs of inducements for its BCOD centers such as free bowling, trips to Europe and giveaways such as turkeys, liquor or trophies; and the cost of installing new A-2 automatic pinsetters or converting A-1 pinsetters to A-2's.

If you find that it was Brunswick's intention to stay permanently in the business of operating bowling centers, then you may also conclude that Brunswick's statements that it was going into the bowling operating business merely for salvage were false or self-serving, or that Brunswick thereafter changed its mind.

If you find that Brunswick is presently building new bowling centers and operating one or more such centers

itself, such as in Omaha, Nebraska, that circumstance is inconsistent with Brunswick's professed objective merely to conduct salvage operations.

You must find whether Brunswick monopolized the local markets for bowling centers in Pueblo, Colorado; Poughkeepsie, New York; Paramus, New Jersey; San Juan, Puerto Rico; and Fort Lauderdale, Florida.

[4723]

You must also find whether Brunswick attempted to monopolize those five local markets plus the local market for bowling centers in Indianapolis, Indiana.

In considering each of these, if you find that in the particular local market, the same bowlers had a choice as to which center they would choose for bowling, you must find that such region constituted a local market. Whether you find that bowlers had a realistic, meaningful choice should depend on whether the centers in each such region were generally comparable and whether bowlers could travel to such centers without substantial difficulty in terms of time or distance.

There also can be no doubt that there are local geographic markets for the operation of bowling centers in metropolitan areas located in various parts of the country.

As to each of those local markets, the applicable law is that Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic markets selected must correspond to the realities of the Industry and

[4724]

economically significant.

Thus, the geographic market may encompass the entire nation, and it may also be as small as a single municipal or other area.

[4725]

If you find local markets in the regions I have just referred to, then you must consider whether Brunswick monopolized or attempted to monopolize such local markets. The evidence shows that plaintiffs owned and operated bowling centers in Paramus, New Jersey; Poughkeepsie, New York; Pueblo, Colorado; and San Juan, Puerto Rico; and that until December 1964 plaintiffs also maintained a bowling center in Fort Lauderdale, Florida. If you find that as a result of Brunswick's operation of bowling centers at a loss in competition with plaintiffs' centers, or as a result of Brunswick's providing special inducements in the form of reduced prices, prizes, and the installation of A-2 automatic pinsetters, that one or more of such bowling centers of plaintiffs has been excluded in whole or in part from the market, then you may find that Brunswick was using its monopoly power to exclude the competition of plaintiffs' bowling centers, and illegally to maintain a monopoly. Likewise, you may make a similar finding of use of monopoly power if you determine that Brunswick's extension of favorable credit terms to plaintiffs' competitors has, in whole or in part, excluded plaintiffs' centers from the market. Finally, you may find partial exclusion of any of plaintiffs' centers if it suffered any loss of revenue as a

[4726]

result of Brunswick's extension of discriminatory terms of credit.

In your deliberations as to whether or not Brunswick monopolized these five local markets or attempted to monopolize these five local markets plus Indianapolis, Indiana, you may take into consideration the fact that the evidence shows that its acquisitions in the market in

Pueblo, Colorado, in the market in the Poughkeepsie area, in the area of Paramus, New Jersey, (and in the Fort Lauderdale area,) gave Brunswick the power to fix prices or to exclude competition in those three local markets. You may consider whether or not Brunswick's decision not to enforce its equipment obligations against Star Bowl or its decision to raise the interest rates for plaintiffs' Indianapolis bowling center, was an exercise of Brunswick's power to fix prices or to exclude competition.

Plaintiffs' next claim, known as the third claim, charges Brunswick with violations of Section 7 of the Clayton Act.

[4727]

The Section 7 charge applies only to the local markets of Pueblo, Poughkeepsie and Paramus. I ask you, therefore, to direct your attention to those markets.

The undisputed evidence shows that Brunswick acquired Belmont Lanes in April 1965. As a matter of law this was an acquisition in a line of commerce, the operation of bowling centers, in a section of the country, namely, the Pueblo, Colorado, metropolitan area.

If Brunswick's acquisition of Belmont Lanes substantially lessened competition, then Brunswick violated Section 7 by acquiring Belmont Lanes. You may consider that Brunswick describes itself as "Number One in Bowling" and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers. Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Pueblo area beyond an insubstantial amount, say beyond 10 to 15%, may be sufficient

for you to conclude that competition has substantially been lessened. Consequently, you

[4728]

properly may conclude that Brunswick by the acquisition of Belmont Lanes violated Section 7 of the Clayton Act because Brunswick through that acquisition obtained allegedly more than 20% of the Pueblo, Colorado, bowling center market.

[4729]

The evidence shows that Brunswick acquired Dutchess Lanes in December 1965. I instruct you as a matter of law that this was an acquisition in a line of commerce, the operation of bowling centers, in a section of the country, namely, the Poughkeepsie, New York, metropolitan area.

If Brunswick's acquisition of Dutchess Lanes substantially lessened competition, then Brunswick violated Section 7 by acquiring Dutchess Lanes.

You may consider that Brunswick describes itself as "Number One in Bowling," and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers.

Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Poughkeepsie area beyond an insubstantial amount, say beyond 10 to 15 per cent, may be sufficient for you to infer that competition has substantially been lessened.

Consequently, you may properly conclude that

[4730]

Brunswick by the acquisition of Dutchess Lanes violated Section 7 of the Clayton Act because Brunswick through

that acquisition obtained more than 20 per cent of the Poughkeepsie, New York bowling center market.

The evidence shows that in the Paramus market Brunswick acquired Interstate Lanes in March 1965, Fair Lawn Lanes in March 1966, Ten Pin Lanes in 1968 and Lodi Lanes in 1970.

If Brunswick's acquisition of these four centers substantially lessened competition, then Brunswick violated Section 7 by acquiring them.

You may consider that Brunswick describes itself as "Number One in Bowling" and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers.

Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Paramus area beyond an insubstantial amount, say beyond 10 to 15 per cent, may be sufficient for you to infer that competition has substantially

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been lessened.

Consequently, you may properly conclude that Brunswick by the acquisition of Interstate, Fair Lawn, Ten Pin Lanes and Lodi Lanes violated Section 7 of the Clayton Act because Brunswick through those acquisitions obtained allegedly 39 per cent of the Paramus, New Jersey, bowling center market.

The undisputed evidence shows that Brunswick acquired Fort Lauderdale Bowl-O-Mat and Imperial Bowl of Dania, Florida, the spring of 1965. As a matter of law this was an acquisition in a line of commerce, the operation of bowling centers, in a section of the country, namely, the Fort Lauderdale metropolitan area.

There is no claim for violation of Section 7 as far as Fort Lauderdale Bowl-O-Mat is concerned.

A company is not a failing company merely because it is experiencing financial difficulties or temporary losses.

To qualify under the failing company doctrine, the resources of the acquired business must be so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure.

[4732]

The "failing company" defense, therefore is a very restricted one. The acquiring company must show that the acquired company faced the grave probability of business failure, and that it was the only available buyer.

And it must show that there was no prospect for reorganizing the company which was acquired.

If some of the centers which Brunswick acquired were not failing, and if operators other than Brunswick could and would have acquired the centers in question, the doctrine does not apply.

I instruct you as a matter of law that the approval of the American International Bowling Corporation bankruptcy sale in no way constituted approval of Brunswick's acquisition of the AIBC centers under the antitrust laws.

The problem of damages in an antitrust case is a difficult one. You cannot go to a book and look for the answer. The plaintiffs must satisfy you that the damage which they suffered was attributable to the wrongdoing of Brunswick. They have the burden of showing that the damage was the result of the misconduct of Brunswick in this case.

[4733]

If, under the instructions of the Court, you should find that the plaintiffs are entitled to a verdict, the law provides

that the plaintiffs are to be fairly compensated for all damages to their business or property, which was proximately caused by the defendant's conduct in violation of the antitrust laws. In arriving at the amount of the award, you should include all damages suffered by the plaintiffs because of lost profits; that is to say, profits which the plaintiffs would have made if Brunswick had not violated the antitrust laws.

In this case the plaintiffs are required to prove the essential elements of their claims and the burden of proof is on plaintiffs in the case to establish by a preponderance of the evidence:

(1) That the defendant has violated the Sherman or Clayton Acts in one or more particulars;

(2) That such violation by defendant was a proximate cause of some injury and consequent damage to the plaintiff "in his business or property."

Further, by the term "proximate cause" as used herein it is meant a cause which in a natural and continuous sequence, unbroken by any new and independent cause, produces an event and without which the event would not have occurred; and to be a proximate cause

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of an event, it should have been reasonably anticipated and foreseen by a person of ordinary care, and prudence, in the exercise of ordinary case, that the event or some similar event would occur as a natural and probable consequence. There may be more than one proximate cause of an event.

An injury or damage is proximately caused by an act or omission whenever it appears that the act or omission played a substantial part in actually bringing about or

causing the injury or damage, and it further appears that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

If you find that plaintiffs have in fact suffered such damage to their business or property, then the circumstances that the precise amount of damage may be difficult to ascertain should not affect the plaintiffs' right to recover damages. Although you can't render a verdict based on mere speculation or guesswork, the plaintiffs are allowed some sensible leeway in their method and proof of damage. In other words, long as there is evidence to support their theory or theories of damage and their computation; it won't matter if it were difficult or even practically impossible to calculate such

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damages to the last penny.

If, in fact, plaintiffs, have been deprived of business by violation of the antitrust laws, by that same token they may have been deprived of the ability to prove exactly what would have happened.

The violators, if any there be, may not take advantage of their own wrong by claiming that damages are too uncertain, if the evidence upon the question of damages reasonably permit approximation of damages based upon reason and the evidence received here in open court.

You should not look to any single element or any single fragment of evidence, but should weigh all of the evidence throwing light upon the extent of damages, if any.

The purposes of damages in an action of this kind, lady and gentlemen, to be fixed by a jury in an antitrust suit, if damages are proper and you should so find, is to put the plaintiffs back in as good a position as they would

have been in if there had not been any violation and if the resulting injury, if any, had not occurred.

So, if you fix damages, you should return them in such sum as you find were the actual damages without increase or diminution. If the fact of damages

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to the plaintiffs has been established by a preponderance of the evidence, then you may determine the amount of the damages on the basis of the best evidence available and may act upon probable and inferential proof, as well as direct and positive proof.

It is now necessary for you to determine the amount of such damages. My next instructions will be devoted to assisting you in determining these amounts.

Plaintiffs' witnesses Kenney, Mendelson, Davis, Lieblich and Gonzalez, all were qualified as expert witnesses. They were entitled to give their opinion as to profits which the plaintiff bowling centers would have made but for defendant's violations of law. These witnesses estimated the amount of business which would have come to plaintiffs' bowling centers if Brunswick had not operated a competitive center or had permitted it to close down in the normal course. Their opinion varied to some extent and the range of damages reflected by the opinions is reflected on Plaintiffs' Exhibit 53 in evidence.

Although there was some differences in amount, these witnesses mutually corroborated each other both in the methods used in determining damages and in general estimates as to the extent of damages.

[4737]

I instruct you that if you believe any one of Messrs. Kenney, Mendelson, Davis, Lieblich and Gonzalez was telling the truth, then you must believe that all were telling the

truth since they mutually corroborated each other and since there was no contradictory evidence offered by Brunswick as to extent of damages, except that the defendant denies that the plaintiffs are entitled to any damages.

With regard to plaintiffs' Request #120, I will charge: You may disregard this testimony as to damages only if you find all these witnesses, Messrs. Kenney, Mendelson, Davis, Lieblich and Gonzalez, were discredited or impeached by contradictory evidence. I instruct you that if you find that the antitrust laws have been violated and that plaintiffs' corporations have been injured thereby, then you must also find damages in the amounts falling within the range as indicated by the testimony and exhibits, apart from any determination you may make as to those damages related to Fort Lauderdale and to plaintiffs' various interest expenses.

[4738]

I instruct you lady and gentlemen that there is evidence in this case, documentary evidence in this case, indicating that if it is found that Brunswick violated the provisions of the Sherman Act relied upon by the plaintiffs, the following estimate of damages to the following bowling centers have been made and placed in evidence by the plaintiffs and/or their witnesses:

Pueblo Bowl-O-Mat, damages within the range of $96,830 to $1,072,030.

Holiday Bowl-O-Mat damages within the range of $298,000 to $373,500.

Paramus Bowl-O-Mat damages within the range between $1,094,400 to $1,276,800.

Paradise Bowl-O-Mat damages within the range of $997,600 to $1,197,120.

Plaintiffs' evidence shows that the parent company, Treadway, suffered the following losses as the result of the closing of Fort Lauderdale Bowl-O-Mat in late 1964:

$89,250 representing the stock investment of Treadway; $343,000 representing notes payable to Treadway; total, $432,250.

If you find that the Franklin National Bank and Indianapolis State Bank loans resulted from

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the exercise of Brunswick's national monopoly power is applied to the credit of its customers, Treadway and Indianapolis Bowl-O-Mat, then you may also find that Treadway and Indianapolis Bowl-O-Mat were injured as follows:

A, plaintiffs' evidence shows that the additional interest required to pay off the five-year loan by Franklin National Bank to Treadway was $27,031.65; and

B, plaintiffs' evidence shows that the additional interest Indianapolis Bowl-O-Mat and/or Treadway had to pay Indiana National Bank to pay off the Brunswick loan was $14,089.

If you do not find that Brunswick monopolized or attempted to monopolize the national market for bowling center operations, but you do find that Brunswick monopolized or attempted to monopolize one or more of the local markets for bowling center operations, Pueblo, Poughkeepsie, Paramus, San Juan or Fort Lauderdale, you may find that the evidence shows that Brunswick caused damages to one or more of these remaining individual plaintiffs.

If you find that Brunswick caused such damage then you must determine the amount of such damage.

[4740]

You may calculate damages by considering the evidence I have referred to for such individual plaintiffs with respect to the national market.

For example, if you do not find that Brunswick monopolized or attempted to monopolize the national market for bowling center operations, but do find that Brunswick monopolized or attempted to monopolize the local market in Pueblo, Colorado, then you may find on the basis of the evidence that Pueblo Bowl-O-Mat suffered damages of anywhere from $964,830 to $1,072,030.

You should make the same calculations for Poughkeepsie, Paramus, San Juan and Fort Lauderdale.

If you find that Brunswick similarly injured Holiday Bowl-O-Mat, the same calculations will yield from $298,800 to $373,500 in damages.

If you find that Brunswick similarly injured Paramus Bowl-O-Mat, the same calculations for four years will yield from $1,094,400 to $1,276,800 in damages.

If you find that Brunswick similarly injured Paradise Bowl-O-Mat, the same calculations for seven years would yield from $997,600 to $1,197,120 in damages.

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If you find that Brunswick similarly injured Treadway by reason of the closing of Fort Lauderdale Bowl-O-Mat, the calculation above will yield $432,250 in damages.

It is clear from these instructions that if you find that Brunswick neither monopolized the national market nor monopolized any of the local markets, you must calculate damages in the same manner if you find that Brunswick attempted to monopolize any of these markets.

Under either circumstances you must calculate the damages in the same manner I have previously described.

If you do not find that Brunswick either monopolized the national market or monopolized any of the local markets or attempted to monopolize any of the local markets, you may still assess damages if you find that Brunswick violated Section 7 of the Clayton Act.

Brunswick violated Section 7 of that Act if you find that its acquisition of any of Belmont Lanes, Dutchess Lanes, Interstate Lanes, Fair Lawn, Lodi Lanes, Ten Pin Lanes, had the effect of substantially lessening competition or of tending to create a monopoly.

[4742]

Or if you find that Brunswick did monopolize or attempt to monopolize some of the local markets but not all, then if any of the local markets I have just named were not among them, you must still consider them under Section 7. You must assess damages if you find that Brunswick acquired one of those last named local markets with the effect of substantially lessening competition or tending to create a monopoly.

If you find that Brunswick acquired one of these local bowling centers with such an effect, then you must assess damages with respect to that local market in the same way I have previously described in connection with monopolization and attempted monopolization.

I must caution you again at this point that you and you alone are the sole judges of the facts. You, as members of this jury, after careful deliberation, after carefully weighing all the evidence and the inferences to be drawn therefrom, have to decide what damages, if any, are to be awarded to the plaintiffs.

Plaintiffs are separately charging the defendant with violations of two statutes, both of which are among the federal statutes commonly

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known as antitrust laws.

Each of the six plaintiffs named above charges the defendant with having violated Section 2 of the Sherman Act.

Each of them except Paradise Bowl-O-Mat, Inc. and Indianapolis Bowl-O-Mat, Inc., and Fort Lauderdale, also charges the defendant with violations of Section 7 of the Clayton Act.

I will explain the provisions of each of those statutes to you, insofar as they bear on the issues which you are to decide.

[4744]

Each of the plaintiffs has charged the defendant with having monopolized or attempted to monopolize the business of operating bowling centers in a local area in which such plaintiff (or, in the case of Treadway Companies, Inc., a former subsidiary of such plaintiff) operates or has operated one or more bowling centers and the defendant Brunswick also operates or has operated one or more bowling centers, except that the plaintiffs Paradise Bowl-O-Mat, Inc. and Indianapolis Bowl-O-Mat, Inc., charge the defendant with having monopolized or attempted to monopolize the bowling center business in San Juan, Puerto Rico, and in Indianapolis, Indiana, respectively, where the defendant never operated a bowling center.

The plaintiff's claim that the defendant Brunswick has acquired monopoly power throughout the United States, but the defendant is not charged with having exercised such power to the damage of plaintiff elsewhere than in the particular Poughkeepsie, Pueblo, Paramus, Fort Lauderdale, San Juan, Puerto Rico and Indianapolis local areas with respect to which each plaintiff claims that

Brunswick has monopolized or attempted to monopolize the business of operating bowling centers.

To "monopolize," as that word is used in Section 2 of the Sherman Act, means to acquire

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and maintain monopoly power over some part of interstate trade or commerce, coupled with the exercise of or with an intent to exercise such monopoly power.

"Monopoly power" means power to fix prices in or exclude competitors from a market.

"Attempt to monopolize," as those words are used in Section 2 of the Sherman Act, means the doing of an act or acts looking toward an acquisition of monopoly power, but falling short of achieving such power, coupled with a specific intent to acquire monopoly power and a reasonable likelihood that such act or acts would lead toward the achievement of such power.

Although the mere possession of monopoly power, coupled with an exercise of or an intent to exercise such power, violates the "monopolize" part of Section 2, a private party, such as the plaintiffs here, in order to be entitled to recover damages on account of such violation, must show that the defendant has exercised monopoly power which has proximately caused damage to the plaintiff's business or property, and must prove the amount of such damage.

The fact that the defendant Brunswick is a manufacturer of bowling equipment and supplies does not make it unlawful for Brunswick to enter the business

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of operating bowling centers even though in doing so it may compete with other bowling center operators who purchase their equipment or supplies from Brunswick.

Although monopoly power sometimes may exist by reason of the share of a particular market held by an alleged monopolist, you are instructed as a matter of law that such share of the market must be large enough to enable the possessor of such power to fix prices in such market or to exclude others from competing in such market before it can constitute "monopoly power."

The defendant Brunswick is not legally disqualified from competing against other bowling center operators in any market merely because it may be larger and wealthier than its competitors, or because the equipment in its centers may have been acquired by it at lower cost than other competitors may have paid for similar equipment, or because in certain respects Brunswick's costs of operating bowling centers may be lower than those of some other competitors. These are fair business advantages which any competitor has a right to utilize for the successful operation of its business, provided it does not use them to exert monopoly power against its competitors.

[4747]

Each of the plaintiffs, in order to recover damages from the defendant under its charge of monopolization, must prove with respect to the market area where it claims that such monopolizing occurred, each and all of the following facts:

One, that the defendant had power to fix prices in or to exclude competitors from the operation of bowling centers in such area;

Two, that the defendant exercised such power with the effect of fixing prices in or of excluding a competitor or competitors from such business in such area, and

Three, that such exercise of such power was the proximate cause of damage to such plaintiff's business or property.

Each of the plaintiffs, in order to recover damages from the defendant under its charge that the defendant attempted to monopolize, must prove with respect to the market area where it claims that such attempted monopolization occurred, each and all of the following facts:

One, that the defendant in such area did an act or acts looking toward the achievement of monopoly power in such area;

Two, that the defendant did such act or acts

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with the specific intent of achieving monopoly power;

Three, that such act or acts were of such nature as to give rise to reasonable probability that they would lead to the achievement of monopoly power by the defendant in such area; and

Four, that such act or acts were the proximate cause of damage to the plaintiff's business or property.

If you find from a preponderance or greater weight of the evidence that Brunswick went into the business of operating bowling centers with a predominant intent of utilizing repossessed bowling equipment to produce cash with which to pay its debts, or with a predominant intent of protecting the collectibility of monies owed to it by bowling center operators on equipment purchase contracts, or for both of such purposes, and not for the purpose of injuring any other operator of bowling centers, the entry of Brunswick into the bowling center business would not be evidence of a specific intent to acquire monopoly power.

Brunswick, for the purpose of collecting as much as it could of the monies owed to it by bowling center proprietors for the purchase price

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of bowling equipment, was not required as a matter of law to deal on identical terms with all bowling center proprietors who became delinquent in their payments to it, provided it did not discriminate among them with the specific intent of acquiring monopoly power.

Brunswick had a right to determine in each case the steps which it believed would be most appropriate or effective toward collecting the delinquent indebtedness.

It could decide in each such case whether or not to extend the indebtedness and, if it decided to do so, to further decide the terms on which it would grant the extension.

It also had the right to decide whether or not to repossess the equipment of a delinquent operator and, if it decided to do so, to further decide when it would do so.

If you find from a preponderance or greater weight of the evidence that Brunswick consistently followed a policy of extending the indebtedness of delinquent operators when it believed that such operators thereby would be able to pay Brunswick on the extended terms, that it did not repossess the equipment of delinquent operators until it

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had exhausted all reasonable possibility that such operators could and would pay their indebtedness to it, and that in following such policies it did not discriminate among bowling center operators for the purpose of injuring any such operator, actions by Brunswick pursuant to such policies would not be evidence of any specific intent to acquire monopoly power.

It is lawful for a competitor to lower its prices for the purpose of competing more effectively with others. If you

should find it to be a fact that in any instance Brunswick lowered the prices which it charged the public for bowling at one or more of its bowling centers, either by charging a lower cash price or by offering inducements of other kinds, and if you should further find that Brunswick did so for the predominant purpose of meeting competition and thereby protecting the business of its own centers, or for the predominant purpose of generating bowling in its centers by creating new bowlers, and not for the purpose of injuring any competitor, such actions by Brunswick would not indicate a specific intent on its part to acquire monopoly power.

All of the plaintiffs except Paradise

[4751]

Bowl-O-Mat and Indianapolis Bowl-O-Mat and Lauderdale, also charge that the defendant violated Section 7 of the Clayton Act and that such plaintiffs were damaged by such violation. Section 7 provides, insofar as it applies to this case, that no corporation engaged in interstate commerce may acquire the whole or any part of the stock or assets of another corporation engaged also in interstate commerce where, in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly.

[4752]

The plaintiff Holiday Bowl-O-Mat, Inc., charges that the defendant violated Section 7 of the Clayton Act by acquiring assets of the bowling center known as Dutchess Lanes in Poughkeepsie, New York, from Lence Lanes Corporation, which said plaintiff alleges was engaged in interstate commerce. The plaintiff Pueblo Bowl-O-Mat, Inc., charges that the defendant violated Section 7 by acquiring

assets of Belmont Lanes, in Pueblo, Colorado, from National Bowlers Corporation, which said plaintiff alleges was engaged in interstate commerce. Plaintiff Bowl-O-Mat Paramus Operations charges that the defendant violated Section 7 by acquiring the stock of Fair Lawn Lanes, in Fair Lawn, New Jersey, and Interstate Lanes, in Ramsey, New Jersey, at a bankruptcy sale of the assets of American International Bowling Corporation, which previously owned such stock.

Each of these plaintiffs, to be entitled to prevail on its claim under Section 7 of the Clayton Act, must prove each and all of the following facts:

First, that the assets acquired by the defendant were acquired from a corporation engaged in interstate commerce;

Second, that the acquisition of such assets or stock by the defendant has substantially lessened competition or has resulted in Brunswick's monopoliz-

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ing the business of operating bowling centers in the area where such assets or stock were acquired, and

Third, that by reason thereof the plaintiff has suffered damage proximately caused by such acquisition.

If you should find from a preponderance or greater weight of the evidence that the defendant, Brunswick, is entitled to a verdict on any or all of the plaintiffs' claims, you will not reach the question of the amount of damages sought by the plaintiffs under those claims.

If you should find from a preponderance or greater weight of the evidence that any of the plaintiffs is entitled to a verdict on its claim or claims, you then should determine the amount of damages, if any, suffered by such plaintiff as the direct and proximate result of the defend-

ant's acts in violation of the Federal antitrust laws as found by you with respect to such claim or claims.

The amount of such damages need not be determinable exactly from the evidence, but must be limited to such amount as you could reasonably estimate from the evidence. Damages which are purely speculative,

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or with respect to which the evidence provides no basis for a reasonable estimate, should not be awarded.

None of the plaintiffs could be entitled, in any event, to recover as damages any claimed loss of profits which you might find from a preponderance or greater weight of the evidence to have resulted from lawful competition between such plaintiff and the defendant, or from any other lawful business conduct of the defendant.

I repeat, you are concerned only with the second and third claims of the plaintiffs.

The second claim of the plaintiffs Pueblo, Holiday, Paramus, Paradise Treadway on behalf of Fort Lauderdale and Treadway itself, charges monopolizing the business of bowling centers in certain areas by Brunswick and in other instances, attempting to monopolize, on behalf of Pueblo, Holiday, Paramus, Treadway on behalf of Fort Lauderdale and Indianapolis Bowl-O-Mat.

The third claim of the plaintiffs Pueblo, Holiday and Paramus charges the defendant violated Section 7 of the Clayton Act by its acquisition of Belmont Lanes in Pueblo, Colorado; Dutchess Lanes in Poughkeepsie, New York; Fair Lawn Lanes in Fair Lawn, New Jersey; and Interstate Lanes in Ramsey,

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New Jersey.

As you know by now, the defendant denies all these charges.

Your verdicts in this case must be unanimous on all claims, namely, 6 to 0. Separate unanimous verdicts must be returned on each claim. Your verdicts in this case must represent the considered judgment of each juror.

[4756]

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without doing violence to your individual judgment or conscience.

Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations do not hesitate to examine and re-examine your views, and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times during the course of your deliberation that you are not partisans, you are judges, judges of the facts of this case. And your sole function here is to ascertain the truth from all the evidence and to render a just and true verdict, using your good sense as reasonable people.

I will excuse you now in order to consult with counsel. You don't have to go back to your

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room. Just step outside, having a smoke, and I will call you right back in a couple of minutes.

(The jury left the courtroom.)

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[4757D]

(The jury returned to the courtroom, and the following proceedings were had within their hearing and presence:)

The Court: Now a few closing remarks and then you can retire to your deliberations. And the exhibits will be made available to you.

Traditionally Juror No. 1 acts as the foreman of the jury. The foreman will preside over your deliberations and will be your spokesman here in court.

In your deliberations you may vote in any manner you please, by paper ballot, by show of hands, or any other method you choose. Remember, you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, until after you have reached unanimous verdicts in this case.

If you need assistance during your deliberations, communicate with the Court in writing, signed by your foreman or by one of your members on behalf of the jury, and I will try to help you.

[4758]

I have prepared for you forms of verdicts. They are not to be used in your deliberation. After you have completed your deliberations you should then complete them.

They are as follows:

Under the second claim we find in favor of the plaintiff Pueblo Bowl-O-Mat and against the defendant, and assess damages at dollars, blank; or, under the second claim we find in favor of the defendant Brunswick and against the plaintiff Pueblo Bowl-O-Mat.

Under the second claim we find in favor of the plaintiff Holiday Bowl-O-Mat and against the defendant, and assess damages, dollar sign; or under the second claim we

find in favor of the defendant Brunswick and against plaintiff Holiday Bowl-O-Mat.

Under the second claim we find in favor of the plaintiff Paramus Bowl-O-Mat and against the defendant Brunswick, and assess damages, dollars; or under the second claim we find in favor of the defendant Brunswick and against plaintiff Paramus Bowl-O-Mat.

Under the second claim we find in favor of the plaintiff Paradise Bowl-O-Mat and against

[4759]

the defendant, and assess damages at, dollars; or under the second claim we find in favor of the defendant Brunswick and against the plaintiff Paradise Bowl-O-Mat.

Under the second claim we find in favor of the plaintiff Treadway (losses suffered by the closing of Fort Lauderdale Bowl-O-Mat), and against the defendant, and assess damages at dollar sign; or, under the second claim we find in favor of the defendant Brunswick and against the plaintiff Treadway.

Under the second claim we find in favor of the plaintiff Treadway (losses suffered by interest charges) and against the defendant Brunswick, and assess damages at dollars, blank; or under the second claim we find in favor of the defendant Brunswick and against the plaintiff Treadway.

Under the second claim we find in favor of the plaintiff Indianapolis Bowl-O-Mat (losses suffered by interest charges) and against the defendant, and assess damages at; or under the second claim we find in favor of the defendant Brunswick and against the plaintiff Indianapolis Bowl-O-Mat.

[4670]

On the third claim we find in favor of the plaintiff Pueblo Bowl-O-Mat and against the defendant, and assess

damages at dollars, blank; or on the third claim we find in favor of the defendant Brunswick and against the plaintiff Pueblo Bowl-O-Mat.

On the third claim we find in favor of the plaintiff Holiday Bowl-O-Mat and against the defendant, and assess damages at dollars blank; or on the third claim we find in favor of the defendant Brunswick and against the plaintiff Holiday Bowl-O-Mat.

On the third claim we find in favor of the plaintiff Paramus Bowl-O-Mat and against the defendant, and assess damages at dollars; or on the third claim we find in favor of the defendant Brunswick and against the plaintiff Paramus Bowl-O-Mat.

In the event that you should find for the defendant on all plaintiffs' claims, your verdict should be, "We find in favor of the defendant and against the plaintiffs on all of the plaintiffs' claims."

Now, I would be remiss in my duty as a judicial officer if I didn't state this for the

[4761]

record. It is a pleasure and an honor for me to have these competent attorneys appear in this court, and I mean that very, very candidly. This case has been tried in the true tradition of this profession which all of us are in, and again, I just want to thank the attorneys for the way they have conducted themselves in this courtroom.

After the marshal is sworn——

Mr. Hoffmann: Is it appropriate, your Honor, for us to express, I am sure both of us, our heartfelt feelings for your patience, your tolerance and your wisdom in the face of this long trial, and your fairness?

The Court: Certainly.

Mr. Seeley: I certainly join in that, your Honor.

The Court: Thank you very much.

(A deputy marshal is duly sworn.)

The Court: I almost forgot Mr. Britton sitting over there. He is like the tenth baseball player set up by the American League.

Mr. Britton, I say to you very, very sincerely, perhaps briefly, you have been very attentive in all of these proceedings, but as you know from the initial instructions I gave you

[4762]

when this case first started, you are an alternate juror and you are not permitted to join the other alternate jurors.

If you will wait downstairs the marshal will get your lunch, then you can go to my chambers, Room 311, and have your lunch in there.

Again, I am sure counsel join with me when I say to you that we really appreciate the services that you have rendered as an alternate juror.

Now, members of the jury, again I am very grateful to you for the services you have rendered.

Counsel, please get together on all of the exhibits.

(At 12:05 p.m. the jury retired to deliberate.)

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[4766]

MORNING SESSION.

(The following proceedings were had at side bar, without the hearing or presence of the jury:)

The Court: I just want to spread this on the record. I don't know whether I did last night, but I had counsel's

permission to let this jury go to dinner from 6:15 to 7:15. Mr. Bigger gave me permission on your behalf, and Mr. McNeill pursuant to telephonic conversation gave this Court permission on behalf of the defendant in this cause.

I have before me a brown envelope. This is my practice, incidentally. My law secretary opened it partially, and then he realized I do not permit this. I always have the envelope opened in front of counsel and on the record.

I don't know what is in it. I now hand it to Mr. Hoffmann, attorney for the plaintiffs, and ask him to open it, and ask him to read what it says into the record.

I hope it is not critical of anybody, that's all.

Mr. Hoffmann: "Please clarify the following:

[4767]

Section 2 of the Sherman Act, Section 7 of the Clayton Act, and can we find in favor of the plaintiff in one center and in favor of the defendant in another center, or must one verdict be applied to all centers?

"Foreman, George Pfeiffer.

"P. S. Will the last section of your charge answer these questions? If so, please read it."

The Court: Now, what I'd like you to do is, I'd like you to all sit down at the counsel table and think about it. And I will talk to Mr. Sokol about it rather than take this from you, and then we will decide on how to answer it.

If it is not too lengthy I want you also to consider that we either type it or write it out in longhand and send it back. I frown upon bringing the jury back into the courtroom for two minutes.

Do I have your permission to have Miss Costello Xerox these?

Mr. Seeley: Yes.

(Short recess.)

The Court: Now I will hear from you, Mr. Hoffmann, on the requests submitted to the Court by the jury. Yes?

[4768]

Mr. Hoffmann: If your Honor please, the first paragraph after reference to clarifying Section 2, Section 7, if I may hold that for just a moment, the first paragraph thereafter is, "Can we find in favor of the plaintiff in one center, in favor of the defendant in another center," and I think it is quite clear from your Honor's instructions, of course, the answer is yes.

"Or must one verdict be applied to all centers."

And I think the answer to that is no.

The Court: Well, that's not accurate.

There could be one verdict as to all centers in favor of the defendant.

Mr. Hoffmann: The question is, "Or must one verdict be applied to all centers."

I think from the verdicts that were handed to the jury, it is clear that it can be done in any alternative.

The Court: Yes, all right.

Mr. Hoffmann: In relation to the first matter, now, I would hope that your Honor would read in some of your charges on Section 2 and Section 7 of the Clayton Act.

We have done the following: We have indicated

[4769]

the charges that we feel from our own presentation that the Court had accepted and made part of the charge ought to be read, and perhaps there are others.

And we also have some—the references to your own charges which we think should be read.

I don't know if you wanted me to trouble the record by reading these numbers aloud.

The Court: Have you got them numbered?

Mr. Hoffmann: Yes.

The Court: What is the number? I think that would be sufficient. I'm just thinking about your requests.

Mr. Hoffmann: This is from our requests which was used by the Court.

Section 2 of Sherman, numbers 39, 40, 41, 43, 44, 46, 49, 51, 53, 65, 66, 67 and 74.

The Court: How about 66?

Mr. Hoffmann: 65, 66, 67 and 74.

And the Section 7 aspect from our charges, 81, -3, -4, -5 and -6, -7 and -8.

In other words, it is 81, then 83 to 88, and then 101, 102, 103 and 103A.

Now, your Honor, we, of course, would be most content if your Honor were to select whatever

[4770]

charges your Honor thinks are most appropriate to read from the whole welter of charges that were read yesterday.

And if you were to follow the course of reading the ones that we wish and the ones that defense counsel might supply you, that they wish, if that course is followed, then this time I would urge you to read ours in second position rather than in the first, out of fairness, since yesterday was just the reverse.

The Court: With regard to the proposed verdicts?

Mr. Hoffman: Yes.

The Court: Now, Mr. McNeill or Mr. Seeley.

Mr. Hoffmann: Would this serve any utility for you? These are your own charges which you read, which I take it were not proposed by either side, but which were from the Court.

Would this reference to them be of any value to you?

Mr. McNeill: Are they numbered?

Mr. Hoffmann: Pages of the transcript indicated.

The Court: I have had handed to me, and I will give you the sheet shortly, Mr. McNeill and

[4771]

Mr. Seeley, it is entitled, "Judge Whipple's charges, Section 2, transcript, 4667, defines monopolize, outline three essential facts or conditions, transcript 4669-70, defines attempt to monopolize, refers to natural and probable consequences, transcript 4671, intent as shown by direct and indirect, transcript 4672, specific intent, not necessary to prove ability to achieve monopoly, transcript 4673, specific intent, transcript 4674, trade or commerce, transcript 4675, again defines monopolization and attempt, 4676, size alone, etc., power to exclude, etc."

I'm just reading this for the record. I will give you this sheet in a minute.

Section 7, transcript 4677, four elements, 4678, three elements, 4679, several factors, re: tendency, etc., 4681, plaintiff's burden, 4682, proximate cause, 4683, failing company.

I think in all fairness you should take this, Mr. McNeill or Mr. Seeley, take a look at it and we will recess.

(Short recess.)

[4772]

Mr. Seeley: May I inquire when we will have a complete transcript of the instructions which we don't have as yet? I think it is a handicap to try to attack this problem without a complete set of the instructions.

I am troubled by the fact, as is quite obvious already, what sounds like a very simple request really spreads out and becomes a request to restate the bulk of the instructions.

The Court: And I'm not surprised, very frankly.

Mr. Seeley: In view of the size of the problem I should like to get that transcript and come to court at 2:00 o'clock.

The Court: I will give you every opportunity to do it. I don't know whether I will wait until 2:00 o'clock.

I'd like to hear your arguments now on the requests as submitted to me.

Mr. Hoffmann: May I make this observation, that the transcript given us goes right through your substantive charges, and it breaks off in the midst of your notes as to the evidence.

Now, my recollection is that after that what went on had to do with the matter of

[4773]

damages, the substantive elements are all completed in this transcript as we have it in front of us.

The Court: Now I will hear you, let me hear your adversary on it, if you are ready to argue, on the requests as submitted.

Mr. Seeley: The requests?

The Court: Just what the jury has inquired of this Court today.

Mr. Seeley: Well, I agree with Mr. Hoffmann on the fact that they should be told they can return either separate verdicts or all for the plaintiff or all for the defendant. They do not have to return the same verdict as to each center.

The Court: Suppose we just think of this, and I address this to all counsel, in answer to the–let's call it the second part of the first paragraph, you may find in favor of the plaintiff in one or more centers or you may find in favor of the defendant in one or more centers.

One verdict does not necessarily have to be applied to all centers.

Mr. Seeley: That's fair.

The Court: I think it is understandable. I may be wrong, but I just wrote this out in my

[4774]

chambers.

Mr. Hoffmann: I agree.

The Court: Do you want to argue the other part, Sections 2 and 7, or do you want to read the transcript first?

Mr. Seeley: I want to read the transcript first.

The Court: I will permit this jury to go out for an early lunch.

What do you think about that?

Mr. Hoffmann: I am just hopeful that counsel's zeal for preparation at this point will not result in this jury being hung over the weekend or any unnecessary time

being devoted to answering their inquiry. We have used the time to good advantage and are content with the–we are content with the transcript as it is because we don't think the rest of the transcript has anything to do with the matter.

The Court: You may sit down, unless you want to speak to me further.

Mr. Seeley: No.

The Court: Let me give you my thoughts on this: It is the Court's intent to repeat Section 2 of the Sherman Act. I don't think I

[4775]

have to repeat it for the record.

"Every person who shall monopolize, or attempt to monopolize, any part of the trade or commerce among the several states shall be guilty of violating the law.

"Section 7 of the Clayton Act provides:

"No corporation shall acquire, directly or indirectly, the stock or assets of another corporation where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly.

"I also charge you that:

"The term 'monopolize' as used in the antitrust laws refers to the power allegedly obtained and maintained by the defendant for the purpose of removing or excluding competitors from the field of competition in a particular business or industry, in this case, the operation of bowling centers.

"In this case the defendant has monopolized within the meaning of the antitrust laws if:

"One, it knowingly obtained or maintained monopoly power to remove or to exclude or keep out competitors from the field of competition.

"Two, that the defendant possesses that

[4776]

power.

"Three, that it has the purpose and intent to exercise that power to exclude or remove as to cause injury to the business of one or more of the plaintiffs.

"Of course, if the power to remove or exclude competitors has been exercised and if, as a result of the exercise of such power, one or more competitors have been removed or excluded, monopolization has clearly occurred; but it is not necessary that competitors actually be removed or excluded from the field of competition if it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred.

"The term 'attempt to monopolize' involves two essential elements:

"One, a specific or purposeful intent to monopolize.

"Two, some act done in furtherance of that intent, but insufficient to produce a monopoly. In order to find an attempt to monopolize, both elements—the intent and the act—must appear, and must together result in a reasonable probability that a monopoly will sooner or later occur.

[4777]

"I further charge you if under the instructions of this Court and the requests to charge of the plaintiffs and the defendant, which I have given to you, and which you will consider together with my regular instructions, you should

find that the plaintiffs or any one of them are entitled to a verdict, the law provides that the plaintiffs or any one of them are to be fairly compensated for all damages, if any, to his business or property which was proximately caused by the defendant's conduct, in violation of the antitrust laws.

"In arriving at the amount or amounts of award, if any, you should include all damages suffered by the plaintiffs or any one of them, because of lost profits; that is to say, profits which the plaintiffs or any one of them would have made but for the violation of the antitrust laws.

"If you find that the plaintiffs or any one of them has in fact suffered damage to his business or property, such as a loss in profits, proximately caused by the alleged illegal conduct of the defendant complained of, then the circumstance that the precise amount of plaintiffs' or any one of their damage claims may be difficult to ascertain, should not affect plaintiffs' recovery.

[4778]

"On the other hand, the plaintiffs or any one of them are not to be awarded remote or purely speculative damages. An allowance for lost profits may be included in the damages awards, if any, only when there is some reasonable basis in the evidence for determining that plaintiffs have in fact suffered a loss of profits, even though the amount of such loss is difficult of ascertainment."

Now, that's taking certain segments of my charge, very frankly. I'm trying to make it as simple as possible for this jury to understand and comprehend.

Do you want to wait and see the transcript?

Mr. Seeley: No, I think if I may have the court reporter read back the first part of it quite slowly, then I

will be able to address myself to it without waiting for the transcript.

I take it your Honor is suggesting that might be the way you would be answering the inquiry?

(Short recess.)

Mr. Seeley: Let me say first that the defendant agrees with what appears to be the view of the Court, that what the jury needs at this time is a fairly brief and succinct restatement of Section 2 and Section 7 in the Court's own

[4779]

words.

We think it would be inappropriate and probably not very helpful to the jury for the Court to re-read some 30 or 40 of the instructions which were given at the request of plaintiffs—the parties, both parties.

The Court: I am trying to streamline it, I am trying to bring it home in everyday language with them.

Mr. Seeley: I am saying that we are in sympathy. I have read what your Honor stated from the bench a few minutes ago as a suggestion, and the defendant has two objections to it which I will state.

The Court: Please.

Mr. Seeley: In summarizing the provisions of Section 7, the Court says, "No corporation shall acquire, directly or indirectly, the stock or assets of another corporation."

I would like to make the point again that the statute says "No corporation engaged in commerce shall acquire the stock or assets of another corporation engaged in commerce," and that Section——

The Court: You lost me for a minute.

No corporation engaged in commerce?

[4780]

Mr. Seeley: That's right.

The Court: Shall acquire directly or indirectly the stock or assets of another corporation engaged in commerce?

Mr. Seeley: And Section 1 of the Clayton Act, that the Act says that the word "commerce" for the purposes of the Clayton Act, means trade and commerce among the several states, so that the word "interstate" should go in there.

The Court: Anything else, Mr. Seeley?

Mr. Seeley: Yes. The other with respect to the proposed instruction on monopolization.

The Court—now, let me see——

"In this case the defendant has monopolized within the meaning of the antitrust laws if:

"One, it has knowingly obtained or maintained monopoly power to remove or to exclude or keep out competitors from the field of competition.

"Two, that the defendant possesses that power.

"Three, that it has the purpose and intent to exercise that power to exclude or remove as to cause injury to the business of one or more of the plaintiffs."

And then the next paragraph, the Court goes on to say:

[4781]

"Of course, if the power to remove or exclude competitors has been exercised, and if, as a result of the exercise of such power, one or more competitors have been removed or excluded, monopolization has clearly occurred; but it is not necessary that competi-

> tors actually be removed or excluded from the field of competition if it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred."

Your Honor, it is perfectly correct, as an abstract proposition of law, that monopolization may occur if monopoly power is possessed and if it is either exercised or there is an attempt to exercise it.

But this is a damage case. In equity cases where the purpose of the action is to forestall threatened damage in the future it is not necessary to prove that the power has been exercised or that the damage has yet occurred. It is only necessary in such a case to prove that the power exists and that the defendant intends to use it, in which case he may be enjoined from using it.

But this is a damage case. This jury is not

[4782]

at all concerned with equity issues, and people are not damaged by intentions, however unfriendly. They are damaged by acts.

And it is, therefore, our position that in this case, in the context of the issues here, it is confusing and misleading to give to the jury the abstract proposition that a party may be guilty of monopolizing if he only has the power and the intent.

It is our position that this being a damage case, the instructions should be limited to the statement that monopolization in the context of this case means possession of the power to exclude and the exercise of that power resulting in damage.

Those are my two points, your Honor.

The Court: Thank you, Mr. Seeley.

Mr. Hoffmann: If your Honor please, I think your monopoly charge, if I may say so, having in mind the apple, is as clear as it could possibly be.

I think that the monopoly charge has been somewhat confused in the presentation because the problem is not private suit as against public suit; the problem for the private suit is simply

[4783]

to prove causative damage. Otherwise the tests are the same.

If I may make the observation, this distinction between the equity case and the damage case I submit has no precedent anywheres in antitrust learning. It is, of course, a question of has there been, has there been something proximate which has caused damage to the plaintiff.

And as to that, your charges couldn't be clearer, because if the power to remove or exclude has been exercised and if as a result of the exercise of such power one or more competitors have been removed or excluded, monopolization has clearly occurred.

> "But it is not necessary that competitors actually be removed or excluded from the field of competition if it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred."

Now, these three include knowingly obtaining or maintaining monopoly power to remove or exclude or to keep competitors from the field of competition. That I would suppose would satisfy Mr. Seeley. If we have not been hurt by this then of course it

[4784]

makes little difference whether there was a monopoly or

not. And I think your charge makes that as clear as any words could make.

I think that I should wryly observe in any case that it is still an equity case here, this is not only a damage case but it is an equity case. There is nothing that turns on that, your Honor.

This is not a criterion of monopoly power. You don't have one different monopoly power for a case in law and another one for a case in equity.

You don't have different guides as to what is illegal in law and equity under the antitrust laws.

The only single question you have is assuming the liability is there, assuming the illegal conduct took place, was the plaintiff hurt by it.

The Court: What have you got to say with regards to the insertion of the words requested by the defendant?

Mr. Hoffmann: I think that's going to cause a great deal of trouble for the jury, and I think it is designed really to put the jury in some sort of confused state.

[4785]

We have charges, you have charges that you read yesterday which relate to commerce.

Now, there isn't any doubt that Brunswick is in commerce. That's admitted in pleadings, so the jury shouldn't spend any time trying to figure out whether or not Brunswick is in commerce.

That's the first word he would have inserted.

Then the next question is should there be the word "commerce" applied to the acquired company. That bides a whole line of legal decisions.

There is other language in Section 7 that's a guide to that as well, is the business subject to the jurisdiction of

the Federal Trade Commission, and so forth, which we haven't put into this charge.

Your Honor, I don't even think there is a fact question about commerce in this case either for the acquired company or for the acquiring company. But to put it in here it seems to me is to invite the jury to labor over what is meant by being in commerce.

I would rather see the whole statute read than have it excerpted in this fashion, but I see nothing wrong or misleading about the way your Honor has done it.

[4786]

I think it is precise and it takes out the guts of the section, which is what the jury should be concerned with, and I think that the commerce aspect of it is just a red herring, and it shouldn't be pulled in here.

The Court: The objections for the defendant are noted on the record.

Bring the jury down, please.

Mr. Seeley: Will we have the same understanding, that in the event my objections are not accepted, that it will be assumed on the record that I have taken an exception to——

The Court: Well, exceptions aren't necessary. I will let them remain on the record.

Mr. Hoffmann: Could I raise a point, your Honor?

It troubles me a little bit.

I'm not sure that I know how to solve the problem. Yesterday your Honor read with great precision, I thought, the damage consideration, charged the jury about them.

And today in the last paragraph it says, "On the other hand, the plaintiffs or any one of them are not to be awarded remote or purely speculative damages."

[4787]

I would like at this late stage to have some modification of this paragraph to indicate that plaintiffs have relied on Exhibit 53 to show damages.

Now, it is true that in your charge yesterday you pointed to that and pointed to the fact that one of the witnesses corroborating the—the exhibit also corroborates the other witness who corroborates the exhibit. But this may suggest to the jury that the plaintiff has only made a showing of remote or purely speculative damages, and I submit that if the jury finds liability, Plaintiffs' Exhibit 53 isn't subject to that characterization.

The Court: You just read that sentence. How about the next sentence:

> "An allowance for lost profits may be included in the damages awarded, if any, only when there is some reasonable basis in the evidence for determining that plaintiffs have in fact suffered a loss of profits, even though the amount of such loss is difficult of ascertainment."

Mr. Hoffmann: I think that's probably the counterpoint.

[4788]

The Court: I think so.

Mr. Hoffmann: I just hope 53 doesn't get lost.

The Court: I konw you hope it doesn't get lost, but the defendant hopes it gets lost. Never the twain shall meet.

Have the marshal bring the jury down, please.

I don't recall, Mr. Reporter, whether I made a ruling on Mr. Hoffmann's last request.

I decline it, for the record.

Mr. Hoffmann: Just the reference to 53?

The Court: Yes.

(The jury entered the courtroom at 11:40 a.m., and the following proceedings were had within the hearing and presence of the jury:)

The Court: Members of the jury, first let me apologize for the delay in answering the requests that you have given to the Court, but we have had some legal arguments on it, some time has ensued in trying to answer what I think might be an intelligent answer to the inquiries propounded.

Let the record note that this will be filed with the Court immediately.

> "Please clarify the following:
>
> "Section 2 of the Sherman Act, Section 7 of

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> of the Clayton Act, and can we find in favor of the plaintiff in one center and in favor of the defendant in another center, or must one verdict be applied to one center?
>
> "Foreman, George Pfeiffer
>
> "P.S. Will the last section of your charge answer these questions? If so, please read them."

Mr. Hoffmann: Your Honor, I am sure by sheer chance of inadvertence something happened just now which never happened to you in your career, but you read the phrase, I suggest, wrongly. The question was "or must one verdict be applied to all centers."

The Court: Let me read it again.

"Please clarify the following:

"Section 2 of the Sherman Act and Section 7 of the Clayton Act, and can we find in favor of the plaintiff in one center and in favor of the defendant in another center, or must one verdict be applied to all centers?"

What did I say, one? I think the writing, small L, no reflection, Mr. Foreman, on you.

"P.S. Will the last section of your charge answer these questions? If so, please read it."

Members of the jury, try to listen to me

[4790]

carefully.

You may find in favor of the plaintiff in one or more centers, or you may find in favor of the defendant in one or more centers.

One verdict does not necessarily have to be applied to all centers.

It is the Court's intent to repeat Section 2 of the Sherman Act.

Section 2 of the Sherman Act provides:

Every person who shall monopolize, or attempt to monopolize, any part of the trade or commerce among the several states shall be guilty of violating the law.

Section 7 of the Clayton Act provides:

No corporation shall acquire, directly or indirectly, the stock or assets of another corporation where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly.

I also charge you that:

The term "monopolize," as used in the antitrust laws, refers to the power allegedly obtained and maintained

by the defendant for the purpose of removing or excluding competitors from the field of competition in a particular business

[4791]

or industry, in this case, the operation of bowling centers.

In this case the defendant has monopolized within the meaning of the antitrust laws if:

One, it has knowingly obtained or maintained monopoly power to remove or to exclude or keep out competitors from the field of competition.

Two, that the defendant possesses that power.

Three, that it has the purpose and intent to exercise that power to exclude or remove as to cause injury to the business of one or more of the plaintiffs.

Of course, if the power to remove or exclude competitors has been exercised and if, as a result of the exercise of such power, one or more competitors have been removed or excluded, monopolization has clearly occurred, but it is not necessary that competitors actually be removed or excluded from the field of competition if it appears from a preponderance of the evidence in the case that the three essential facts or conditions just stated have in fact occurred.

The term "attempt to monopolize" involves two essential elements:

[4792]

One, a specific or purposeful intent to monopolize.

Two, some act done in furtherance of that intent, but insufficient to produce a monopoly. In order to find an attempt to monopolize, both elements—the intent and the act—must appear, and must together result in a reasonable probability that a monopoly will sooner or later occur.

I further charge you if under the instructions of this

Court and the requests to charge of the plaintiffs and the defendant, which I have given to you, and which you will consider together with my regular instructions, you should find that the plaintiffs or any one of them are entitled to a verdict, the law provides that the plaintiffs or any one of them are to be fairly compensated for all damages, if any, to his business or property which was proximately caused by the defendant's conduct, in violation of the antitrust laws.

In arriving at the amount or amounts of award, if any, you should include all damages suffered by the plaintiffs or any one of them, because of lost profits; that is to say, profits which the plaintiffs or any one of them would have made but for the violation of the antitrust laws.

[4793]

If you find that the plaintiffs or any one of them has in fact suffered damage to his business or property, such as a loss in profits, proximately caused by the alleged illegal conduct of the defendant complained of, then the circumstance that the precise amount of plaintiffs' or any one of their damage claims may be difficult to ascertain, should not affect plaintiffs' recovery.

On the other hand, the plaintiffs or any one of them are not to be awarded remote or purely speculative damages. An allowance for lost profits may be included in the damages awarded, if any, only when there is some reasonable basis in the evidence for determining that plaintiffs have in fact suffered a loss of profits, even though the amount of such loss is difficult of ascertainment.

Thank you very much for your attention. Now will you please retire again?

(At 11:48 a.m. the jury retired for further deliberation.)

(At 1:55 p.m. the jury returned to the courtroom and rendered the following verdict through their foreman:

On Claim 2 for Brunswick and against plaintiffs on all counts of this claim.

[4794]

On Claim 3, in favor of Pueblo Bowl-O-Mat and against defendant in amount of $964,830; in favor of Holiday Bowl-O-Mat and against defendant in amount of $298,800; in favor of Paramus Bowl-O-Mat and against defendant in amount of $1,094,400; no cause for action as to Treadway Companies, Inc., Paradise Bowl-O-Mat, Inc., Indianapolis Bowl-O-Mat, Inc.)

(On motion of the Court the jury was duly polled and all concurred in verdict as rendered by their Foreman.)

• • •

DEFENDANT'S MOTION FOR DIRECTED VERDICT OR VERDICTS AT CLOSE OF PLAINTIFFS' CASE.

Now Comes the defendant, Brunswick Corporation, at the conclusion of the plaintiffs' case-in-chief, the plaintiffs having rested, and respectfully moves the Court to direct the jury to return a verdict against the plaintiffs and for the defendant on all claims of the plaintiffs herein.

In the alternative, the defendant respectfully moves the Court to direct the jury to return separate verdicts against each of the plaintiffs and for the defendant on the respective separate claims of the plaintiffs alleged as "Second Claim" and "Third Claim" in the complaint of the plaintiffs herein.

Brunswick Corporation,
Defendant

By

Miles G. Seeley
Thomas B. McNeill
Arthur C. Dwyer
Its Attorneys

DEFENDANT'S MOTION FOR DIRECTED VERDICT OR VERDICTS AT THE CLOSE OF ALL OF THE EVIDENCE.

Now Comes the defendant, Brunswick Corporation, at the close of all of the evidence herein, all parties having rested, and respectfully moves the Court to direct the jury to return a verdict against the plaintiffs and for the defendant on all claims of the plaintiffs herein.

In the alternative, the defendant respectfully moves the Court to direct the jury to return separate verdicts against each of the plaintiffs and for the defendant on the respective separate claims of the plaintiffs alleged as "Second Claim" and "Third Claim" in the complaint of the plaintiffs herein.

Brunswick Corporation,
Defendant

By

_____

_____

_____

Its Attorneys

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (MAY 23, 1973).

This action having duly come on for trial before the Court and a Jury, Hon. Lawrence A. Whipple, District Judge, presiding, and the Court having instructed the Jury to render separate verdicts under each claim in favor of or against each of the particular plaintiffs asserting such claims and as to each claim found in favor of a plaintiff to assess damages against defendant Brunswick Corporation, or, alternatively, to find in favor of defendant Brunswick Corporation and against each of such plaintiffs or all of them, and the Jury having duly rendered separate verdicts, and the Court having found, based upon such separate verdicts, that defendant Brunswick Corporation is entitled to judgment against six of the plaintiffs with respect to claimed violations of 15 U. S. C. § 2 asserted in the Second Claim of the complaint, as amended at trial (Tr. 4388), and that three of the plaintiffs are entitled to judgments awarding them treble damages under 15 U. S. C. § 15, against the defendant Brunswick Corporation for violations of 15 U. S. C. § 18 as asserted in the Third Claim of the complaint, as amended at trial (Tr. 4309), it is hereby accordingly, now

ORDERED, ADJUDGED, AND DECREED, that

1. Plaintiff Pueblo-O-Mat, Inc., have judgment for treble damages under 15 U. S. C. § 15 in the sum of $2,894,490 against defendant Brunswick Corporation for violation of 15 U. S. C. § 18 as asserted in the Third Claim of the complaint;

2. Plaintiff Holiday Bowl O Mat, Inc., have judgment for treble damages under 15 U. S. C. § 15 in the sum of $896,400 against defendant Brunswick Corporation for violation of 15 U. S. C. § 18 as asserted in the Third Claim of the complaint;

3. Plaintiff Bowl-O-Mat Paramus Operations have judgment for treble damages under 15 U. S. C. § 15 in the sum of $3,283,200 against defendant Brunswick Corporation for violation of 15 U. S. C. § 18 as asserted in the Third Claim of the complaint;

4. Defendant Brunswick Corporation have judgments against plaintiffs Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations, Paradise Bowl-O-Mat, Inc., Treadway Companies, Inc. (for losses claimed to have been suffered by the closing of Fort Lauderdale Bowl-O-Mat, Inc.), Treadway Companies, Inc. (for losses claimed to have been suffered by interest charges) and Indianapolis Bowl-O-Mat, Inc., with respect to the claims of monopolization and/or attempted monopolization asserted by them, under 15 U. S. C. § 2, and that the Second Claim of the complaint, as amended at trial (Tr. 4388), be dismissed with prejudice as to each of them;

5. This Court shall retain jurisdiction over this action for purposes of determining, upon proper application, the amounts of reasonable attorneys' fees and the costs of suit which may be appropriate for recovery against defendant Brunswick Corporation under 15 U. S. C. § 15, together with any other properly taxable costs, said costs to be recovered in one bill of costs. These amounts are to be assessed and entered at the foot of this judgment after disposition of the application therefor to be made to this Court on 20 days notice to defendant Brunswick Corporation;

6. This Court also shall retain jurisdiction over this action for purposes of determining, upon proper applica-

tion by plaintiffs, what forms of equitable relief, if any, are appropriate under 15 U. S. C. § 26 because of the three aforesaid violations of 15 U. S. C. § 18 by defendant Brunswick Corporation, including the equitable relief which the three plaintiffs identified in paragraphs 1, 2 and 3 hereof request in paragraph (c) of the prayer for relief under the Third Claim of the complaint and the equitable relief which all of the plaintiffs in this case except plaintiff Treadway Companies, Inc., request in paragraph (b) thereof; and it is further

ORDERED, ADJUDGED, AND DECREED, that

7. Defendant Brunswick Corporation have judgment against plaintiffs Pueblo Bowl-O-Mat, Inc. and Bowl-O-Mat Paramus Operations for the claimed violations of 15 U. S. C. § 1 asserted in the First Claim of the complaint, and said First Claim is dismissed with prejudice as to each of those two plaintiffs; said plaintiffs, through their counsel, having withdrawn said First Claim voluntarily during the Pre-Trial Conference held before the Court on March 6, 1973 (Tr. 6-7);

8. Defendant Brunswick Corporation have judgment against plaintiffs Saginaw Bowl-O-Mat, Inc., Muncie Bowl-O-Mat, Inc., Skore Lanes Bowl-O-Mat, Inc., Minneapolis Bowl-O-Mat, Inc. and Des Moines Bowl-O-Mat, Inc. with respect to the claims asserted by them in the complaint under 15 U. S. C. § 2 and that the Second Claim asserted in the complaint be dismissed with prejudice as to each of them, the Court having ruled at the close of plaintiffs' case that it should grant the motion of defendant Brunswick Coporation for a directed verdict as to each of those plaintiffs (Tr. 2073);

9. Brunswick Corporation have judgment against plaintiff Treadway Companies, Inc. with respect to the claim asserted by it in the complaint as amended (Tr. 4405) under 15 U. S. C. §18 and that the Third Claim of the complaint as amended be dismissed with prejudice as to it, plaintiff, through its counsel, having voluntarily withdrawn its claim under 15 U. S. C. § 18 with respect to Fort Lauderdale Bowl-O-Mat, Inc. (Tr. 4437) after the Court earlier had granted the motion of plaintiff Treadway Companies, Inc. to conform the pleadings to the proof by allowing said plaintiff to assert said claim under 15 U. S. C. § 18 (Tr. 4405).

10. This Court shall retain jurisdiction over this action for purposes of determining, upon proper application by defendant, the amount of costs, if any, which may be taxed against plaintiffs.

/s/ LAWRENCE A. WHIPPLE,
U. S. District Judge.

JUDGMENT ENTERED this ..... day of ....., 1973.

.....
Clerk.

Approved as to Form:

Law Firm of
MALCOLM A. HOFFMANN,
By (Name Illegible)
Attorneys for Plaintiffs.

STRYKER TAMM & DILL,
ARTHUR C. DWYER,
Attorneys for Defendant.

MOTION OF DEFENDANT FOR JUDGMENTS NOTWITHSTANDING THE VERDICTS AND IN THE ALTERNATIVE FOR A NEW TRIAL.

Now Comes Brunswick Corporation, defendant herein, a jury having heretofore on May 11, 1973 returned verdicts in this cause in favor of the plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. and against the defendant on the respective claims of said plaintiffs under Section 7 of the Clayton Act (15 U. S. C. § 18), the jury having assessed damages against the defendant in each of such verdicts, and the Court on May 31, 1973 having entered judgments against the defendant and in favor of each of said plaintiffs upon the said verdicts after trebling the amounts of the damages assessed by the jury, and respectfully moves pursuant to Rule 50(b) of the Rules of Civil Procedure that the Court set aside said verdicts for said damages and enter judgments notwithstanding said verdicts for the defendant and against each of said plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. on their respective claims under Section 7 of the Clayton Act.

In the alternative, the defendant respectfully moves the Court for a new trial on the issues herein raised by the claims of the plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc., and the defendant's answers thereto, under Section 7 of the Clayton Act.

For grounds of its said motions for judgments notwithstanding the verdicts the defendant says that as a matter of law the Court should have directed verdicts for the defendant and against the plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. on their claims under Section 7 of the Clayton Act for the following reasons:

A. The plaintiffs failed to present any evidence from which the jury properly could find that the defendant's operation of Dutchess Lanes in Poughkeepsie, Fair Lawn Lanes in Fair Lawn, Interstate Lanes in Ramsey or Belmont Lanes in Pueblo gave rise to any reasonable probability that competition would be lessened or that a monopoly would be created in the operation of bowling centers in the respective local markets where such centers were located.

B. The plaintiffs failed to present any evidence from which the jury properly could find that Brunswick's operation of such centers in fact lessened competition or tended to create a monopoly in the operation of bowling centers in the respective areas where such centers were located.

C. The plaintiffs failed to present any evidence from which the jury properly could find that any of such plaintiffs has suffered any loss or damage from any lessening of competition or from anything tending to create a monopoly, the only "damage" evidence offered by the plaintiffs being evidence of unrealized profits which they would have made but for the fact that Brunswick, by its operation of the centers in question, preserved or increased competition in the respective local markets where such centers were located.

D. The plaintiffs failed to introduce any evidence that any of the respective corporations which previously operated Dutchess Lanes, Fair Lawn Lanes, In-

terstate Lanes and Belmont Lanes was engaged in interstate commerce.

E. The plaintiffs failed to introduce any evidence that Brunswick acquired any assets of the corporation which formerly operated Dutchess Lanes and Belmont Lanes.

F. The evidence established as a matter of law that each of the corporations which preceded Brunswick in the operation of Dutchess Lanes, Fair Lawn Lanes, Interstate Lanes and Belmont Lanes, as well as the corporation from whose trustee in bankruptcy Brunswick purchased the stock of Fair Lawn Lanes and Interstate Lanes, was a failing company and that therefore any acquisitions of their assets or stock were beyond the reach of Section 7 of the Clayton Act.

(i) The plaintiffs cannot deny that the competing centers which Brunswick operated were failing businesses without destroying the premise on which all of their "damage" evidence was based, namely, that if Brunswick had not operated the centers in question they would have gone out of business in 1965.

(ii) As a matter of law, American International Bowling Corporation was a failing company when its assets were auctioned off at a bankruptcy sale.

For grounds of its said motion in the alternative for a new trial, the defendant says:

(1) The Court erred as a matter of law in denying the defendant's motions for directed verdicts at the conclusion of the plaintiffs' evidence with respect to the claims of Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. under Section 7 of the Clayton Act.

(2) The Court erred as a matter of law in denying the defendant's motions for directed verdicts at the conclusion of all of the evidence upon the claims of said three plaintiffs under Section 7 of the Clayton Act.

(3) The verdicts in favor of the plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. under Section 7 of the Clayton Act are without foundation or support in the evidence.

(4) Said verdicts in favor of said three plaintiffs under Section 7 of the Clayton Act are contrary to the manifest weight of the evidence.

(5) The Court erred as a matter of law in admitting into evidence over the objection of the defendant the testimony of the plaintiffs' witnesses Lieblich, Kenney, Mendelson and Davis with respect to claimed additional profits which the plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. would have made if the defendant, beginning in 1965, had not operated Dutchess Lanes in Poughkeepsie, New York, Fair Lawn Lanes in Fair Lawn, New Jersey, Interstate Lanes in Ramsey, New Jersey, Ten-Pin-on-the-Mall in Paramus, New Jersey, Lodi Lanes in Lodi, New Jersey and Belmont Lanes in Pueblo, Colorado and if instead such centers had been closed.

(6) The Court erred as a matter of law in admitting into evidence over the objection of the defend-

ant Exhibit P-53, containing a summarization of the plaintiffs' claimed "damages" from the testimony referred to in the preceding assignment of error.

(7) The Court erred as a matter of law in giving to the jury over the objections of the defendant plaintiffs' requested instructions numbered 83 and 85, for the reasons that each of said instructions erroneously told the jury that the defendant's taking over the operation of Dutchess Lanes, Fair Lawn Lanes, Interstate Lanes, Ten-Pin-On-The-Mall, Lodi Lanes and Belmont Lanes were acquisitions in a line of commerce, namely, the operation of bowling centers, whereas, as a matter of law, the operation of bowling centers in a local area within a single state is not in itself a line of interstate commerce and no evidence was introduced showing that the operation of any of the bowling centers named above constituted trade or commerce among the several states or with foreign countries. Said instructions improperly took from the jury the question of whether the respective corporations which preceded the defendant in the operation of said centers were engaged in interstate commerce and in effect directed the jury to find for the plaintiffs on those issues. Said instructions as given by the Court appear on pages 4727 and 4729 of the transcript.

(8) The Court erred as a matter of law in giving to the jury plaintiffs' requested instructions numbered 84, 86, and 88. Each of such instructions left to the jury a question as to whether the operation by the defendant of certain bowling centers substantially lessened competition, despite the fact that there was

no evidence in the record that any competition was lessened by reason of such operations, but on the contrary all of the relevant evidence showed that as a result of such operations, competition in the bowling center business was either maintained or increased in the local bowling market where each such bowling center was located.

Each of these instructions improperly referred to the defendant as "the largest manufacturer of bowling supplies and equipment, as well as being the banker for its bowling center customers" because the claims of the plaintiffs under Section 7 of the Clayton Act related only to the operation of bowling centers in specified local market areas and there was no claim or evidence that the operation of such bowling centers had any effect upon, or was in any manner affected by, the defendant's activities in the manufacture of bowling supplies and equipment or the extension of credit to its customers.

Each of such instructions was incorrect as a matter of law in instructing the jury that the percentage of the relevant local bowling market "occupied" by the Brunswick operated centers constituted sufficient evidence in itself to support a finding that competition had been lessened by Brunswick's taking over the operation of such centers, whereas in fact, as shown by all of the evidence, each of said centers was in existence prior to its operation by Brunswick and represented the same percentage of the local bowling market before Brunswick's operation as after and the operation of such centers by Brunswick in no way lessened competition in said markets but on the contrary maintained or increased such competition.

Each of such instructions was further erroneous in law because in effect it took from the jury the issue

as to whether competition had been lessened in the market areas in question and left them no alternative to finding for the plaintiffs on those issues. Said instructions as given by the Court appear on pages 4727-4731 of the transcript.

(9) The Court erred in giving to the jury plaintiffs' suggested instructions numbers 118, 119, 122, 127, 128, 129, 132, 133 and 134 for the following reasons. These instructions as given by the Court appear on pages 4736-4742 of the transcript.

(a) These instructions erroneously required the jury to assess damages against the defendant based upon the estimated amount of business and profits which would have come to plaintiffs' bowling centers if Brunswick had not operated competitive bowling centers. This overlooked the fact that as a matter of law the plaintiffs could not be damaged by the mere taking over for operation by the defendant of a competing bowling center, but only could suffer legally recoverable damage in the event that as a result of such operation by the defendant competition in the local market for bowling was lessened. On the record, no such lessening of competition occurred in any of the areas in question. The "damages" which these instructions permitted the jury to find were in fact estimated additional profits plaintiffs were not able to achieve because of the preservation of competition and hence could not have been caused by any lessening of competition, and therefore could not be damages properly awarded on account of a claimed violation of Section 7 of the Clayton Act.

(b) These instructions required the jury to accept the testimony of the plaintiffs' "damages" witnesses at its face value, without giving any weight to the possible interest or bias of the witnesses or to circumstances shown by the evidence which might have led the jury to believe that the estimates were unrealistic.

The testimony of these witnesses, who testified as experts was in the form of opinions. Telling the jury that they were required to accept these opinions as "the truth" unless the witnesses were "discredited or impeached" erroneously and prejudicially applied to opinion testimony standards which are applicable only to factual testimony.

(c) These instructions, taken as a group, amounted to instructing the jury that if they found for the plaintiffs on the issues of whether the defendant had violated Section 7 of the Clayton Act, they were required to return verdicts assessing damages in the amounts claimed by the plaintiffs. Taken in connection with plaintiffs' requested instructions 83-88, 133 and 134 which in effect erroneously instructed the jury that it was required to find for the plaintiffs on the issue of violations of Section 7 by the defendant, these instructions amounted to directing a verdict for the plaintiffs on their Section 7 claims in the amounts claimed by them as damages. The use of the words "must assess damages" in plaintiffs' requested instructions 133 & 134 emphasized the mandatory nature of this series of instructions.

(d) Although at other points in the Court's charge, unconnected with these instructions, the Court gave seemingly contradictory instructions which purported to leave to the jury issues for them to decide under the plaintiffs' Section 7 claims, these instructions are not qualified by any reference to such other and contradictory instructions. If the jury considered all of the instructions which the Court gave on the questions of liability and damage under Section 7 of the Clayton Act, they only could have been confused.

(e) Plaintiffs' requested instructions numbers 122 and 127 told the jury that the amount of damages they might find for the plaintiff Pueblo Bowl-O-Mat, Inc. was from $964,830 to $1,072,030. The jury's verdict in favor of that plaintiff found damages in the lower of the above amounts. Part of these claimed damages are not recoverable under the plaintiffs' Section 7 claim because they relate to a twenty month period prior to April 1, 1965 when the defendant began to operate Belmont Lanes. Based upon the calculations whereby the plaintiffs' witnesses arrived at the above amounts, $166,684 of the damages assessed in favor of Pueblo Bowl-O-Mat, Inc. related to the period prior to April 1965 and should not have been included in the assessed damages under any theory. The inclusion of that amount of improper single damages resulted in a judgment in favor of the plaintiff Pueblo Bowl-O-Mat, Inc. which is $500,051 greater than such plaintiff is entitled to on any theory, in view of the jury's having elected to calculate damages on the lowest estimate given by the plaintiffs' witnesses.

All of the foregoing grounds upon which defendant's motion is based will be explicated in the defendant's supporting Brief which will be filed in accordance with local Rule 12(C).

BRUNSWICK CORPORATION,
Defendant

By ARTHUR C. DWYER
Arthur C. Dwyer

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102

Attorneys for Defendant

MILES G. SEELEY
THOMAS B. MCNEILL
MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604

Of Counsel

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (OCTOBER 1, 1973).

This cause having duly come on to be heard before the Honorable Lawrence A. Whipple, District Judge, on motion of defendant Brunswick Corporation, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, for judgments notwithstanding the verdicts and in the alternative for a new trial with respect to the verdicts returned on May 11, 1973 in favor of plaintiffs Holiday Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Pueblo Bowl-O-Mat, Inc. and the judgments entered on said verdicts on May 31, 1973, and the Court, having heard the arguments of counsel, being fully advised and having filed its opinion ruling upon said motions on September 17, 1973, it is

ORDERED that defendant's motion for judgments notwithstanding the verdicts be and hereby is in all respects denied, and it is further

ORDERED that defendant's motion for a new trial be and hereby is in all respects denied, except that it is

ORDERED that defendant's motion for a new trial solely on the issue of the amount of damages to be awarded to plaintiff Pueblo Bowl-O-Mat, Inc. is granted unless within 5 days after entry of this order, Pueblo Bowl-O-Mat, Inc. file with the Clerk of the Court a written consent to reduce the verdict in its favor from $964,830 to $798,480, and to reduce the judgment entered on May 31, 1973, in its favor under 15 U. S. C. § 15 from $2,894,490 to $2,395,440, in which event the motion for a new trial shall be in all respects denied and, it is further

ORDERED, in view of the fact that Pueblo has executed the annexed Consent to Reduce Verdict and Judgment dated September 25, 1973, that defendant's motion for a new trial be and hereby is in all respects denied, and that paragraph (1) of the judgment entered on May 31, 1973 provide as follows:

> (1) Plaintiff Pueblo Bowl-O-Mat, Inc., have judgment for treble damages under 15 U. S. C. § 15 in the sum of $2,395,440 against defendant Brunswick Corporation for violation of 15 U. S. C. § 18 as asserted in the Third Claim of the complaint.

/s/ LAWRENCE A. WHIPPLE
U. S. D. J.

10/1/73

APPROVED AS TO FORM:

LAW FIRM OF MALCOLM A. HOFFMANN

By MALCOLM A. HOFFMANN
Attorneys for Plaintiffs

MAYER, PLATT & BROWN.

By THOMAS B. MCNEILL
Attorneys for Defendant

DEFENDANT'S NOTICE OF APPEAL

Notice is hereby given that Brunswick Corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the final judgments against it and in favor of the plaintiff Pueblo Bowl-O-Mat, Inc. in the sum of $2,894,490, the plaintiff Holiday Bowl-O-Mat, Inc. in the sum of $896,400 and the plaintiff Bowl-O-Mat Paramus Operations in the sum of $3,283,200, entered in this action on the 31st day of May, 1973, as amended by this Court's Order of October 1, 1973 reducing the judgment in favor of plaintiff Pueblo Bowl-O-Mat, Inc. to the sum of $2,395,440.

Dated October 2, 1973.

WILLIAM L. DILL, JR.
William L. Dill, Jr.

STRYKER, TAMS & DILL
Stryker, Tams & Dill
33 Washington Street
Newark, New Jersey 07102
Attorneys for Defendant.

MILES G. SEELEY
THOMAS B. MCNEILL
MAYER, BROWN & PLATT
231 South LaSalle Street
Chicago, Illinois 60604
Of Counsel

COURT OF APPEALS OPINION

(August 14, 1974).

PER CURIAM

The notice of appeal in No. 73-2010, filed on October 2, 1973, is from the "final judgments against [defendant] and in favor of the plaintiff Pueblo Bowl-O-Mat, Inc. in the sum of $2,894,490, the plaintiff Holiday Bowl-O-Mat, Inc. in the sum of $896,400 and the plaintiff Bowl-O-Mat Paramus Operations in the sum of $3,283,200, entered in this action on the 31st day of May, 1973, as amended by this Court's Order of October 1, 1973 reducing the judgment in favor of plaintiff Pueblo Bowl-O-Mat, Inc. to the sum of $2,395,440." Appendix at 106a. The appeal was briefed and argued by appellant and appellees on the assumption that the May 31, 1973 judgment, entered on a jury verdict, was in fact a final judgment. On July 9, 1974 there was referred to this panel a motion by defendant-appellant in No. 74-1621 to have plaintiffs-cross-appellants in No. 74-1622 deemed appellants. We then learned for the first time that appeals No. 74-1621 and No. 74-1622 were from a district court order in the same case as is before us in No. 73-2010, awarding counsel fees. This information prompted an examination of the judgment appealed from which provides:

> "5. This Court shall retain jurisdiction over this action for purposes of determining, upon proper application, the amounts of reasonable attorneys' fees and the costs of suit which may be appropriate for recovery against defendant Brunswick Corporation under 15 U. S. C. § 15, together with any other properly taxable costs, said costs to be recovered in one bill of costs. These amounts are to be assessed and entered at the foot of this judgment after disposition of

> the application therefor to be made to this Court on 20 days notice to defendant Brunswick Corporation;
>
> 6. This Court also shall retain jurisdiction over this action for purposes of determining, upon proper application by plaintiffs, what forms of equitable relief, if any, are appropriate under 15 U. S. C. § 18 by defendant Brunswick Corporation, including the equitable relief which the three plaintiffs identified in paragraphs 1, 2 and 3 hereof request in paragraph (c) of the prayer for relief under the Third Claim of the complaint and the equitable relief which all of the plaintiffs in this case except plaintiff Treadway Companies, Inc., request in paragraph (b) thereof . . . . Appendix at 70a.

The complaint seeks damages pursuant to § 4 of the Clayton Act, 15 U. S. C. § 15 and injunctive relief pursuant to § 16 of the Clayton Act, 15 U. S. C. § 26. The jury verdict disposed of the § 4 claim. Our inquiry has disclosed that the § 16 claim for equitable relief, referred to in paragraph 5 of the judgment appealed from, has not to date been disposed of.

Neither the order appealed from in No. 73-2010 nor the order appealed from in Nos. 74-1621 and 74-1622 contain a certificate pursuant to Rule 54(b), Fed. R. Civ. P. Obviously neither order disposed of all claims since the § 16 Clayton Act claim is still pending. In the absence of a Rule 54(b) certification we lack jurisdiction over these appeals. Thus the three appeals will be dismissed. In the event of an appeal from a final judgment disposing of all claims, or if the district court should in its discretion enter a Rule 54(b) certification with respect to the May 31, 1974 order prior to its disposition of the claim for equitable relief, the briefs and appendices filed in No. 73-2010 may

be filed with respect to the jury's verdict on the § 4 Clayton Act claim. It seems obvious, however, that a single panel of this court should consider the order disposing of the § 4 Clayton Act claim, the order disposing of the § 16 Clayton Act claim for injunctive relief, and the fee order. Thus if these matters come before us on separate appeals in the future the clerk should consolidate them.

AMENDED JUDGMENT OF COURT OF APPEALS

(September 5, 1974).

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the appeals in the above-entitled cases be, and the same are hereby dismissed. Taxation of costs to abide the event of any new appeals in this matter.

Attest:

THOMAS F. QUINN,
Clerk.

September 5, 1974

Certified as a true copy and issued in lieu of a formal mandate on September 5, 1974.

Test: THOMAS F. QUINN,
Clerk, United States Court of Appeals for the Third Circuit.

SUPPLEMENTAL ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(September 17, 1974).

This action having duly come on for trial before the Court and a Jury, the Honorable Lawrence A. Whipple, District Judge, presiding, and the Jury having duly rendered separate verdicts on May 11, 1973, and the Clerk of the Court, based upon such separate verdicts,

(a) having entered a judgment of the Court on May 31, 1973 awarding three of the plaintiffs treble damages under 15 U. S. C. § 15 against the defendant Brunswick Corporation for its violations of 15 U. S. C. § 18 asserted in the Third Claim of the complaint as amended at trial (Tr. 4309), and

(b) having entered an order of the Court on October 5, 1973, amending the judgment entered May 31, 1973, and denying in all respects the post-trial motions of defendant Brunswick Corporation brought under F. R. C. P. 50(b) and

(c) having entered an order of the Court on April 2, 1974, awarding the costs of suit, including a reasonable attorney's fee, to the three prevailing plaintiffs under 15 U. S. C. § 15, and directing that the amounts thereof be entered at the foot of the judgment entered May 31, 1973,

and the United States Court of Appeals for the Third Circuit, in its amended judgment filed September 5, 1974, having dismissed for lack of jurisdiction the appeal from the judgment entered on May 31, 1973, as amended by the order entered October 5, 1973, and the appeal and cross-appeal taken from the order entered April 2, 1974,

and in its opinion filed on August 14, 1974 having expressly granted permission to the Court to make any certifications under F. R. C. P. 54(b) it deems necessary and proper, and it appearing from said opinion that said Circuit Court believed that the above-described judgment and two orders failed to provide for an express determination that there is no just reason for delay and for an express direction for the entry of final judgment as required by F. R. C. P. 54(b),

NOW, THEREFORE, in order that said Circuit Court may have full jurisdiction over and the power to review any appeal or appeals from the above-described judgment and two orders,

IT IS ORDERED:

1. That there is no just reason for delay in the making of an order with respect to the judgment previously entered on May 31, 1973, and the orders previously entered on October 5, 1973 and April 2, 1974.

2. That final judgments now be entered as set forth in said judgment entered on May 31, 1973, and said orders entered on October 5, 1973, and April 2, 1974.

3. That this supplemental order be considered as rendered *nunc pro tunc* as concerns the judgment entered on May 31, 1973, and interest thereon at the appropriate legal rate or rates commence running on May 31, 1973, except that the time for any appeal therefrom shall commence running from the date of entry of this supplemental order.

4. That this supplemental order be considered as rendered *nunc pro tunc* as concerns the order entered on October 5, 1973, except that the time for any appeal therefrom shall commence running from the date of entry of this supplemental order.

5. That this supplemental order be considered as rendered *nunc pro tunc* as concerns the order entered on April 2, 1974 and interest thereon at the appropriate legal rate or rates commence running on May 31, 1973, except that the time for any appeal therefrom shall commence running from the date of entry of this supplemental order.

6. That this Court continue to retain jurisdiction over this action for purposes of determining, upon proper application, the amounts of reasonable attorneys' fees and the costs of suit, above and beyond those awarded in the Court's order entered on April 2, 1974, which may be appropriate for recovery against defendant Brunswick Corporation under 15 U. S. C. § 15, the amount of said Attorneys' fees and costs to be assessed and entered at the foot of the judgment entered on May 31, 1973, as provided for and contemplated by paragraph 5 of said judgment.

7. That this Court shall continue to retain jurisdiction over this action for purposes of disposing of the application made by plaintiffs on October 15, 1973 seeking a ruling as to what forms of equitable relief, if any, are appropriate under 15 U. S. C. § 26 because of the violations of 15 U. S. C. § 18 by defendant Brunswick Corporation, as provided for and contemplated by paragraph 6 of the judgment entered May 31, 1973.

8. That this Court's retention of jurisdiction over this action for purposes described in paragraphs 6 and 7, *supra*, shall in no respect defeat or diminish the certification under F. R. C. P. 54(b) provided for in this supplemental order

or the purposes for which such certification was made as described in this supplemental order.

LAWRENCE A. WHIPPLE,
U. S. District Judge.

SUPPLEMENTAL ORDER filed this 17th day of September 1974.

.....

Approved as to Form:

MALCOLM A. HOFFMANN
Attorneys for Plaintiffs.

.....
Attorneys for Defendant.

I hereby certify that the foregoing is a TRUE COPY of the original on file in my office.

ANGELO W. LOCASCIO,
Clerk.

Per JUNE M. CUNNINGHAM,
Deputy.

DEFENDANT'S NOTICE OF APPEAL.

(September 26, 1974.)

Notice is hereby given that Brunswick Corporation, defendant above-named, hereby appeals to the United States Court of Appeals for the Third Circuit from the judgments entered against it in this action on May 31, 1973, as amended by this Court's orders entered on October 5, 1973, April 2, 1974, and September 24, 1974 in favor of the plaintiff Pueblo Bowl-O-Mat, Inc. in the sum of $2,395,440, the plaintiff Holiday Bowl-O-Mat, Inc. in the sum of $896,400 and the plaintiff Bowl-O-Mat Paramus Operations in the sum of $3,283,200, and entered against it on April 2, 1974 and in favor of the plaintiffs Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc. and Bowl-O-Mat Paramus Operations for attorneys' fees and other costs of suit in the aggregate sum of $446,977.32, said judgments by Supplemental Order entered in this action on September 24, 1974 having been certified as and directed to be entered as final judgments.

DATED: September 26, 1974.

STRYKER, TAMS & DILL,

By WILLIAM L. DILL, JR.
William L. Dill, Jr.
Attorneys for Defendant.

MILES G. SEELEY,
THOMAS B. MCNEILL,
MAYER, BROWN & PLATT,
231 South LaSalle Street,
Chicago, Illinois. 60604
Of Counsel.

DEFENDANT'S NOTICE OF APPEAL.

(February 7, 1975)

Notice is hereby given that Brunswick Corporation, defendant above-named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Final Judgment on Equitable Relief against it and in favor of the plaintiffs Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc. and Bowl-O-Mat Paramus Operations, entered in this action on the 9th day of January, 1975.

STRYKER, TAMS & DILL
By /s/ WILLIAM L. DILL, JR.
William L. Dill, Jr.
Attorneys for Defendant

DATED: February 7, 1975.

Miles G. Seeley
Thomas B. McNeill
Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604
Of Counsel

I certify that a copy of the within notice of appeal was served upon Messrs. Cole, Geaney & Yamner and upon Malcolm A. Hoffmann, Esq., attorneys for plaintiffs, by certified mail, return receipt requested, on February 7, 1975.

STRYKER, TAMS & DILL
By /s/ WILLIAM L. DILL, JR.
William L. Dill, Jr.
Attorneys for Defendant

JUDGMENT OF THE COURT OF APPEALS.

(August 29, 1975)

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was submitted on briefs.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered May 31, 1975, as amended by the orders of the said District Court entered October 5, 1973, and September 24, 1974, which judgment and orders granted damages to the plaintiff-appellees in case No. 74-2127, and the judgment of the said District Court entered on January 9, 1975, which judgment granted equitable relief to the plaintiff-appellees in case No. 75-1152, be, and the same are hereby reversed; the order of the said District Court entered April 2, 1974, as amended by the order of the said District Court entered September 24, 1974, which orders granted an attorney's fee to the plaintiff-appellants in case No. 74-2128, be, and the same are vacated and the cause remanded to the said District Court for further proceedings in accordance with the opinion of this Court. Costs taxed against appellees in cases numbered 74-2127 and 75-1152.

ATTEST:
/s/ THOMAS F. QUINN
CLERK

August 29, 1975

APPENDIX

Volume 5.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

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COMPUTATION OF PROPRIETOR'S INTEREST AND DEPRECIATION AND CASH NEED

INTEREST

	Pinsetter	Lane
Price	$8,100	$4,500
Down Payment	500	900 (20%)
	$7,600	$3,600
Interest Factor	23%	.1425%
	8 \1,748 yrs.	5 \513 yrs.
	218	102 = $320 per year interest @ 6%

DEPRECIATION

Pinsetter	$ 8,100
Lane	4,500
Other	2,400 {Carpet - Signs - Cash Registers {Bar - Snack Bar - Intercom - Safe - etc.
	$15,000 per lane

$15,000 for 15 yrs = $1000 per lane per year

CASH NEED

	Pinsetter	Lane
Unpaid balance	$ 7,600	$ 3,600
Interest	1,748	513
	8 \9,348 yrs.	5 \4,113 yrs.
	$1,168	$823 = $1,991 or $2,000 per lane

A1574
Exhibit P1

DEPRECIATION AND CHARGES FOR DETERMINATION OF NET INCOME BY BRUNSWICK BCOD CENTERS FOR PINSETTERS AND LANES AND BY BRUNSWICK'S CUSTOMERS

BRUNSWICK'S CUSTOMERS

Depreciation:

Pinsetter	$8,100
Lane	4,500
Other (carpet, signs, cash registers, bar, snack bar, intercom, safe, etc.)	2,400
	$15,000

The composite useful life of this equipment is 15 years.
Depreciation of $15,000 over 15 years equals $1,000 per year.

Annual Depreciation $15,000 / 15 years. = $1,000 per year

Interest:

Pinsetter $1,748 / 8 yrs. = $218 per year

Lane $ 513 / 5 yrs. = 102 per year

Total Annual Interest $ 320 per year

Total Charges $1,320 per year

BRUNSWICK BCOD CENTERS

Depreciation: $ 500 per year

Interest Charged by Brunswick: -0- per year

Total Charges $ 500 per year

PL. EX. 1A
(page 1)

A1575
Exhibit P1A

CASH NEED FOR EACH LANE OPERATED BY BRUNSWICK BCOD CENTERS AND BY BRUNSWICK'S CUSTOMERS

BRUNSWICK'S CUSTOMERS

	Pinsetter	Lane
Sales Price	$ 8,100	$ 4,500
Down Payment	500	900
Balance Due	$ 7,600	$ 3,600
Interest	1,748 (23%)	513 (14¼%)
Total Balance Due 8 yrs	$ 9,348	5 yrs. $ 4,113
Annual Payment on Balance	$ 1,168	$ 823

for a total of $1,991 or $2,000 per lane

BRUNSWICK BCOD CENTERS

Cash Need for equipment obligations to of Brunswick $ = 0 -

PL. EX. 1A
(page 2)

A1576
Exhibit P1A

ORIGINAL INVOICE

THE BRUNSWICK AUTOMATIC PINSETTER CORPORATION
623 SOUTH WABASH AVENUE
CHICAGO 5, ILLINOIS

BRANCH	TERRITORY	STATE	TERMS	SHIPPED VIA	ORDER NUMBER
66	20	22	Note Account	Muskegon, Prepaid	AP 6459

SOLD TO:
Minneapolis Bowl-O-Mat, Inc.
Apache Bowl-O-Mat
N.E. 37th Avenue & Silver Lake Road
Minneapolis, Minnesota

SHIP TO: Same

DATE SHIPPED: 6/30/61

INVOICE DATE: 6/30/61

QUANTITY ORDERED	CODE NUMBER	DESCRIPTION	PRICE	QUANTITY SHIPPED	AMOUNT
36	750000	BRUNSWICK AUTOMATIC PINSETTERS, INSTALLED	8100.00	36	291,600.00
		LESS:			
		Required Down Payment			18,000.00
					273,600.00
		Finance Charge			62,928.00
		Total Note			336,528.00

these reflect the 23% interest factor (finance charge) used in Pl. Ex. 1 on pin setters

PL. EX. ~~1A~~ id.

1B

FORM NO. 300-57
REV. 6-57

A1577
Exhibit P1B

April 3, 1962

TO: J R E

FROM: D P L

RE: Minneapolis and Indianapolis

A very serious error was made in the computation of interest in our lane contracts with Brunswick on each of these installations. My prior understanding with Brunswick was that we would be charged 6% simple interest on the unpaid balance on our lane contracts. They told me some time ago that they computed this interest where we utilized a five year pay out (40 installments) by multiplying the unpaid balance by a factor of 1425. In Indianapolis since the unpaid principal balance was $140,000 the proper interest would be $19,950. Our contract contains a present charge of $25,200. Thus there is an over-computation of interest of $5,450.

In the case of Minneapolis, where the unpaid balance was $136,000 a correct interest charge would have been $19,380. Our present contract computes the interest at $24,480 an over payment of $5,100.

I have just spoken with John Bartlett at Brunswick in Chicago and he has agreed to correct these accounts to reflect the interest properly computed. Please keep this as a suspense item to make certain all is appropriately accomplished.

A1578
Exhibit P1B

March 29, 1962

Mr. John Bartlett
Brunswick Corporation
623 South Wabash Avenue
Chicago 5, Illinois

Re: Minneapolis Bowl-O-Mat, Inc.

Dear John:

When I spoke with you last week while I was at Des Moines, you said you would call me in Paterson this Monday with respect to the computation of the interest charge in this contract.

In the summer of 1960 I conferred with you and Bill Bromer at your offices in Chicago and discussed a factor .1429 which would be applied in our lane contracts to give us the 6% finance charge on the unpaid balance of the contract where we utilized a forty installment payout. This computation was utilized in the Pueblo Bowl-O-Mat purchase and it was my impression that it was being used in Minneapolis as well.

The prospectus that was published by National Bowl-O-Mat Corporation in connection with its public sale of 220,000 shares in April of 1961 stated specifically that its arrangements with Brunswick Corporation on the lane contracts included a 6% finance charge. In view of such statement, we could not possibly pay more than 6% with respect to Minneapolis Bowl-O-Mat, since its purchase was contemplated by the prospectus.

I shall appreciate it if I may hear from you by reply mail so that we may adjust the interest computation in this contract.

With all good wishes,

Sincerely,

NATIONAL BOWL-O-MAT MANAGEMENT CO.

By: _____

Daniel Parke Lieblich - General Partner

DPL/es

BEST COPY AVAILABLE

A1579
Exhibit P1B

Brunswick CORPORATION

GENERAL OFFICE

April 24, 1962

AIR MAIL
SPECIAL DELIVERY

Mr. Daniel Parke Lieblich
National Bowl-O-Mat Management Company
152 Market Street
Paterson 1, New Jersey

Dear Mr. Lieblich:

In reply to your letter of April 16, 1962 to Mr. J. [illegible] Bartlett, please be advised that we have altered the original finance charge of the bowling lane account #61037 (Indianapolis Bowl-O-Mat, Inc.) to reflect an approximate simple 6% interest charge or .1425 of the original deferred balance. The original deferred balance of this account was $140,000.00. The finance charge at .1425 would be $19,950.00, or a total note of $159,950.00. The payment schedule now reads $3998.75 each for forty equal installments.

Since you have been making payments at the rate of $4130.00 per month, this change will have the net effect of prepaying a part of the April installment in the amount of $787.50. At this writing, we have not received the installment due April 1, 1962. The payment schedule will now read as follows:

One at $3342.50, due April 1, 1962
Thirty-Three at $3998.75, commencing May 1, 1962 (excepting the months of June, July, August, and September)

It has been brought to my attention also that a modernization account for Indianapolis Bowl-O-Mat, namely account #61077, for refreshment tables and bowling chairs is past due. Payments in the amount of $189.60 each, numbering five, were to have commenced February 1, 1962. At this writing, three payments, or $568.80, are past due.

I have understood, through Mr. R. J. Zagone, and confirmed through my telephone conversation of Monday, April 23, with Mr. Julian Goldstein, that new extension papers for Minneapolis Bowl-O-Mat, reflecting the same change as mentioned above for Indianapolis Bowl-O-Mat, have been received at your office. We would appreciate

your co-operation in executing these documents and returning them as soon as possible.

Should you have any further questions, please call me. Thank you.

Very truly yours,
BRUNSWICK CORPORATION

Jos. A. Rice
Regional Collection Manager

JAR:dg

5/16 – Rec called. Hey would [illegible] 475.85 [illegible] $31,076 on 5/16

Brunswick CORPORATION

AIR MAIL SPECIAL DELIVERY

April 26, 1962

Mr. Daniel Parke Liebliech
National Bowl-O-Mat Management Company
152 Market St.,
Paterson 1, New Jersey

Dear Mr. Liebliech:

I understand from Mr. J.M. Bartlett that you wish to pay the installments due on Minneapolis Bowl-O-Mat under the revised schedule of a 14½% finance charge. Accordingly, setforth below are the revised figures.

lanes

Deferred balance	$136,000.00
14½% Finance Charge	19,380.00
~~Contract balance~~	$155,380.00
	31 076

Payment schedule: 40 at $3884.50

Payments due 10/15/61 through 4/15/62	$ 27,191.50
Interest accrued through May 1, 1962	475.85
Total amount due	$ 27,667.35

We would appreciate it if you would give this account and the five payment note referred to in my letter of April 24th for Indianapolis Bowl-O-Mat your preferred attention.

Thank you.

Very truly yours,

BRUNSWICK CORPORATION

Jos. A. Rice
Regional Collection Manager

JAR/ml

A1582
Exhibit P1B

SUMMARY OF BRUNSWICK'S COMPUTATION ON
PUEBLO BOWL-O-MAT, INC.

Basic Lanes	$92,096.08	
Elective Equipment & Supplies	71,312.42	
Drilling Equipment & Components	2,160.65	
	Total	$165,569.15
Labor Installation	$38,000.00	
Tools	122.50	
Spare Parts Kit	2,250.00	
Freight on Lanes	3,000.00	
	Grand Total	$208,941.65
15% down payment		$ 31,341.25
Balance due		$177,600.40
5 year interest charge based at rate of .1425		$ 25,308.06
Total time balance due		$202,908.46

lanes

The time balance of $202,908.46 is payable in 40 installments, each in the amount of $5,072.71.

A1583
Exhibit P1B

UNIFORM OPERATING PROCEDURE

AUTOMATIC PINSETTER ORDERS

RB-310
UOP Number

Objective

1. The objective of this procedure is to outline the requirements for Automatic Pinsetter Orders insofar as freight and drayage, cash payment, trade-in, finance charge, deferred payment terms, and discounts are concerned.

General (Form 200.47)

2. An order for Automatic Pinsetters should be taken only on a Brunswick Automatic Pinsetter Order, Form 200.47.

3. For other general provisions, please refer to U.O.P RB-304.

Freight and Drayage

4. All Automatic Pinsetters will be sold F.O.B. origin, plus local drayage. Under no circumstances are orders to be written providing for prepaid freight.

Cash Payment

5. The minimum cash payment required for the sale of Automatic Pinsetters is $500.00 per pinsetter plus sales taxes. Of this amount, a minimum of $300.00 per machine must be paid with the order and no order will be approved until this amount has been received.

Trade-In Equipment

6. Trade-in allowances for pinsetters taken in trade on Automatic Pinsetter Orders will be considered a part of the total down payment, but under no circumstances may the amount of trade-in allowance be used to reduce the required cash payment of $500.00 per machine.

Finance Charge

7. The finance charge will be 26% of the deferred balance.

Deferred Payment Terms

8. Automatic Pinsetters purchased on deferred payment terms will provide for weekly payments with guaranteed minimums.

   a. Weekly payments - Payments are to be made on Monday of each week calculated at the rate of 12 cents per line for all lines bowled during the preceding week.

   b. Monthly Minimum payments - Guaranteed monthly minimums will be $125.00 per machine each month during the period October thru May and $50.00 per machine each month during the period June thru September.

REV: 7/15/58

A1584
Exhibit P2

Example

9.

Total Selling Price		$81,000.00
10 Automatic Pinsetters		2,430.00
Sales Tax at 3%		$83,430.00
Down Payment:		
Cash with order at $300.00 per machine	$3,000.00	
Cash prior to delivery at $200.00 per machine plus taxes	4,430.00	
Trade-In	1,000.00	
Total Down Payment		$ 8,430.00
Deferred Balance of Cash Sale Price		$75,000.00
Finance Charge at 26%		19,500.00
Deferred Balance		$94,500.00

Weekly payments:

12 cents per line for total number of lines bowled during previous week.

Monthly minimums:

$1,250.00 per month during the period October thru May. $500.00 per month during the period June thru September.

6/4/58

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A1585
Exhibit P2

UNIFORM OPERATING PROCEDURE

AUTOMATIC PINSETTER ORDERS

RB-310

UOP Number

Government and Educational Institution Discounts	10. A 10% discount will be allowed to all government agencies (Local, State and Federal) on Automatic Pinsetter Orders. This discount will also be allowed to all educational institutions providing the institution undertakes the obligation of operating the alleys. Under this policy, the 10% discount will apply only to the equipment purchased and not to freight, mechanic's expense, etc. No additional cash discounts nor trade-in allowance will be allowed on pinsetter equipment.
Cash Discounts	11. A 2% cash discount will be allowed from the amount of net sale on all Automatic Pinsetter sales which are paid for within the regular discount period, with the exception of government and educational institutions receiving the 10% discount discussed in paragraph 10. This discount will also apply to all sales paid for prior to delivery. The net sale shall consist of only the equipment portion of the contract including installation. This excludes taxes, freight, mechanic's expense, etc.

X 12.

BEST COPY AVAILABLE

10/1/58

A1586
Exhibit P2

Write to Brunswick

PX 3

EXH. NO. P-2 Id
WIT. Freblich
DATE 11/1/66
BY C. Parsons
FED. COURT REPORTERS

AREA ANALYSIS

Pueblo, Colorado
Pueblo County, Colorado
And
Area

This Analysis Prepared By:

H. H. PIERCE
Real Estate Specialist
BRUNSWICK CORPORATION
7885 W. 16th Avenue
Lakewood 15, Colorado

PL. EX. 275 id

A1587
Exhibit P3

SCOPE OF SURVEY

The area covered by this survey includes Pueblo, Colorado and Pueblo County, Colorado, located at the foot of the eastern slope of the Rocky Mountains in southeastern Colorado. Pueblo is a quick access to the mountain playgrounds of Colorado. The city is 114 miles south of Denver and serviced by U. S. Highways 85–87 North and South, and U.S. Highway 50 East and West.

Pueblo County has a gradual eastern slope of 10 feet to the mile from the high plains of Colorado. The City itself is located at the confluence of the Arkansas and Fountain Rivers in the fertile Arkansas Valley. Pueblo County covers 2414.2 square miles and the City covers over 18 square miles.

Geographic description:

38°15' North, longitude 104°40' West.
Altitude is 4690 Feet.

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ECONOMIC STRUCTURE

AGRICULTURE AND INDUSTRY

POPULATION

NEED FOR ADDITIONAL BOWLING CENTER

BELMONT SUBDIVISION AND ITS ACCESSIBILITY

SUMMARY

NEED FOR ADDITIONAL BOWLING CENTER

The existing bowling establishments in Pueblo do not come close to filling the need in this City. Of the four bowling centers in the City, consisting of 94 lanes, only about 40 of these lanes would be considered current in respect to desired service.

Enumerating:

PARK LANE - 10 alleys
Street parking, obsolete, assorted equipment, and inadequate facilities

PAYNES LANES - 12 Alleys
Street parking, steel mill area, assorted equipment, overall operation not up to current desired standards

BOWLERO LANES - 32 Alleys
Difficult to see from anywhere other than immediate entrance. 25 winding steps underground which is not popular. 16 lanes back to back with center island. This deal is built on a former river bed and requires the use of water pumps continuously. These facilities can be considered barely adequate but certainly not outstanding.

BOWL-O-MAT - 40 Alleys
This bowling center is the only one in the area to be considered as a current, adequate, desired type of operation. There is plenty of parking and all new modern facilities. It is easily accessible, visible, ground floor and a modern recreation center.

These comments make it obvious of the need and demand for more new modern bowling facilities in Pueblo.

A1590
Exhibit P3

BELMONT SUBDIVISION AND ITS ACCESSIBILITY*

Belmont area of Pueblo is 2.5 miles northeast from the mid-downtown section of the City. It is easily accessible north and south by U. S. Highway 85-87, a four-lane freeway. East and west it is serviced by U. S. Highway 50, on which it is located, and Northern Avenue from south Pueblo and 4th Avenue from central Pueblo. Northern Avenue and 4th Avenue join the Freeway.

The Belmont section of Pueblo is one of the newer sections, and is adjacent to the million dollar Continental Pueblo Hotel. The general trend in building has been to this area and it considered to have the greatest growth potential. There are presently between 6000 and 7000 people in this area consisting of workers from the Pueblo Ordnance Depot, Colorado State Hospital, downtown businesses, and upper echelon at Colorado Fuel & Iron Corporation. Developers advise us of the construction of 200 more homes in the area this year. There is presently a large modern shopping center in conjunction with this section.

Every aspect of Belmont makes it desirable for a bowling center of the newest and modern decor.

Distance from Belmont to existing bowling centers:

PARK LANE	-	2.3 miles
BOWLERO LANES	-	2.8 miles
PAYNES LANES	-	3.8 miles
BOWL-O-MAT	-	5.7 miles

*-Accompanying map

A1591
Exhibit P3

SUMMARY

This analysis has been prepared on a completely objective basis, and each proposed operation is judged solely on its own merits.

For 113 years Brunswick Corporation has been instrumental in the planning and building of thousands of recreation centers throughout the world. This experience well qualifies us for judging the merit of such an operation as proposed. Our diligence is constantly exerted to keeping the bowling industry prosperous. The welfare of the proprietor is as much a factor to success as is our own.

It would only be prudent to assume from the foregoing text that Pueblo can accommodate 50 more lanes of modern styling, combining the utmost comfort and convenience that the bowling business can offer.

The economic structure is sound and stable; agriculture is a mainstay, and industry is expanding.

The population has increased constantly for years and every indication points to more increases. The bowling population is also increasing yearly as more people join the ranks of weekly participants. This is stimulated by more and better facilities for people to take advantage of.

Competition is limited in the Pueblo area by virtue of limited, modern facilities.

In conclusion, considering all the facts as I have found them, it is my recommendation to build a new bowling center in this area. With proper management, such an installation should prove to be a profitable investment for the proprietor and Brunswick Corporation, now and for many years to come.

AREA ANALYSIS

PX 4

EXH. NO. 1-1 ...
WIT. ...
DATE ...
BY ...
FED. COURT REPORTERS

PUEBLO, COLORADO

Pueblo is located 114 miles south of Denver, Colorado and 44 miles south of Colorado Springs, Colorado, on Highways 85 and 87, now a four-lane freeway between Pueblo and Denver. Pueblo County covers an area of 2,414 square miles and the city of Pueblo itself covers 17 square miles.

Current estimates place the metropolitan population of Pueblo in excess of 110,000. U.S. Census figures for 1950 show a metropolitan population of 73,247, however, since that time Pueblo has annexed 3,722 acres. During this same period building permits have been issued for the construction of 5,127 new homes in the city limits; 626 new homes were constructed in 1956, according to a 1957 survey made by the U.S. Post Office Department, mail is now being delivered to 103,652 residents in the city. The Retail Trade Area has a population of over 200,000, and the Wholesale Trade Area population exceeds 600,000.

The State of Colorado is experiencing a boom in population. Conservative estimates place the population increase at 800 persons per week. The United States Post Office at Pueblo reports Pueblo's metropolitan population, since 1950, has grown steadily at an average of 5,000 persons annually. Based on this trend, Pueblo should be well over 150,000 in 1970 and exceed 200,000 in 1980. PL. EX. 273 ic

Unlike many Colorado cities, Pueblo does not depend on the tourist business for its economy. The buying power of Pueblo's population is steady throughout the year,

EMPLOYMENT

Industry Group	Employment	Percent
Total	40,000	100.
Manufacturing	10,500	26.3
Construction	2,000	5.
Transportation, Communication & Public Utilities	5,000	12.5
Wholesale and Retail Trade	5,900	14.7
Finance, Insurance and Real Estate	1,000	2.5
Service	5,200	13.
Government	7,000	17.5
Agriculture	2,400	6.5
All Other	1,000	2.5

Occupationally, these workers are employed as follows:

Professional and Managerial	16%	Semi-Skilled	19%
Clerical and Sales	19%	Un-Skilled	11%
Service	11%	Agricultural	6%
Skilled	18%		

RECREATIONAL FACILITIES

Municipal

Parks	8
Softball Diamonds	8
Basketball Courts	9
Golf Courses	1
Picnic Areas	8
Tennis Courts	15

Private

Golf Courses	1	
Swimming Pools	7	
Riding Stables	3	
Roller Skating Rinks	1	
*Bowling Lanes	3	(10 lane house) (12 lane house) (32 lane house)

54
42
96

A1594
Exhibit P4

	Seating Capacity
1 Stadium	12,250
1 Baseball Park	5,100
1 Municipal Auditorium	1,963
7 Motion Picture Theatres	
4 Drive-In Theatres	

* The existing ten-lane house is located on North Main Street and has no parking other than street parking. This operation is doing the best it can with obsolete equipment and inadequate facilities. The existing twelve-lane house is located in the steel mill area and is also housed in an old building with nothing but street parking. The facilities here are also inadequate and do not measure up to current ideas regarding service, accomodations, etc.. The 32 lane house is located in the basement of the new Sears Shopping Center. The lanes are a back-to-back arrangement, with 16 lanes on each side of the concourse. This installation is new and has only been open for business since February, 1959. The facilities can be considered as adequate only, and not outstanding. Below ground level installations are not popular, and in some instances are to be avoided.

In Pueblo we have a ratio of one alley bed per approximately 2,400 people. Compared with the accepted national ratio of one bed per every 1,000 people, it becomes immediately apparent that there is a definite need for more bowling facilities in this area.

Recently the Business Research Corporation of Chicago was commissioned by the MacGregor Sports Products, Inc. to survey the bowling business and its potential nationally. It was determined by the Research Corporation in 1957 that there were 22,000,000 bowlers in the United States and predicated on their survey, they estimate a participation of 35,000,000 bowlers by the year 1966. Following you will find a projection of

A1595
Exhibit P4

population increase made by this organization:

1956	168,200,000
1957	181,000,000
1969	179,400,000
1965	193,300,000
1970	209,400,000

Number of families with incomes above $4,000.00 per year.

1946	18,900,000	
1956	28,500,000	(55%)
1966	41,400,000	(45%) estimate

The future potential in the sport of bowling appears will follow the projected future economy best expressed in the phrase - "more people, with more time, and more money". The population is increasing at the rate of almost 3,000,000 per year with projected acceleration in the future. To this may be added the increase of leisure time. The 40 hour work week is today a reality, and many places are on a 37-1/2 hour work week. It is predicted that by 1966 the 35 hour work week will be within the realm of possibility. The factors, population growth, increased income and more leisure time each provide an impact for the future recreational facilities of which bowling is a part.

A prime factor is deciding the advisability of establishing a new enterprise in any field is predicated on the need for that product or service. Today, more than any other time, in history, people demand and expect convenience, comfort and beauty, which only a modern business can offer. The bowling business is no exception. Bowling today is the greatest individual participation sport in existance, and new bowlers are being added yearly at the rate of a million or more. Bowling has invaded the televised athletic event field, to the extent that millions of people each week watch top bowling stars compete against each other with thousands of dollars at stake. Brunswick is proud to have been

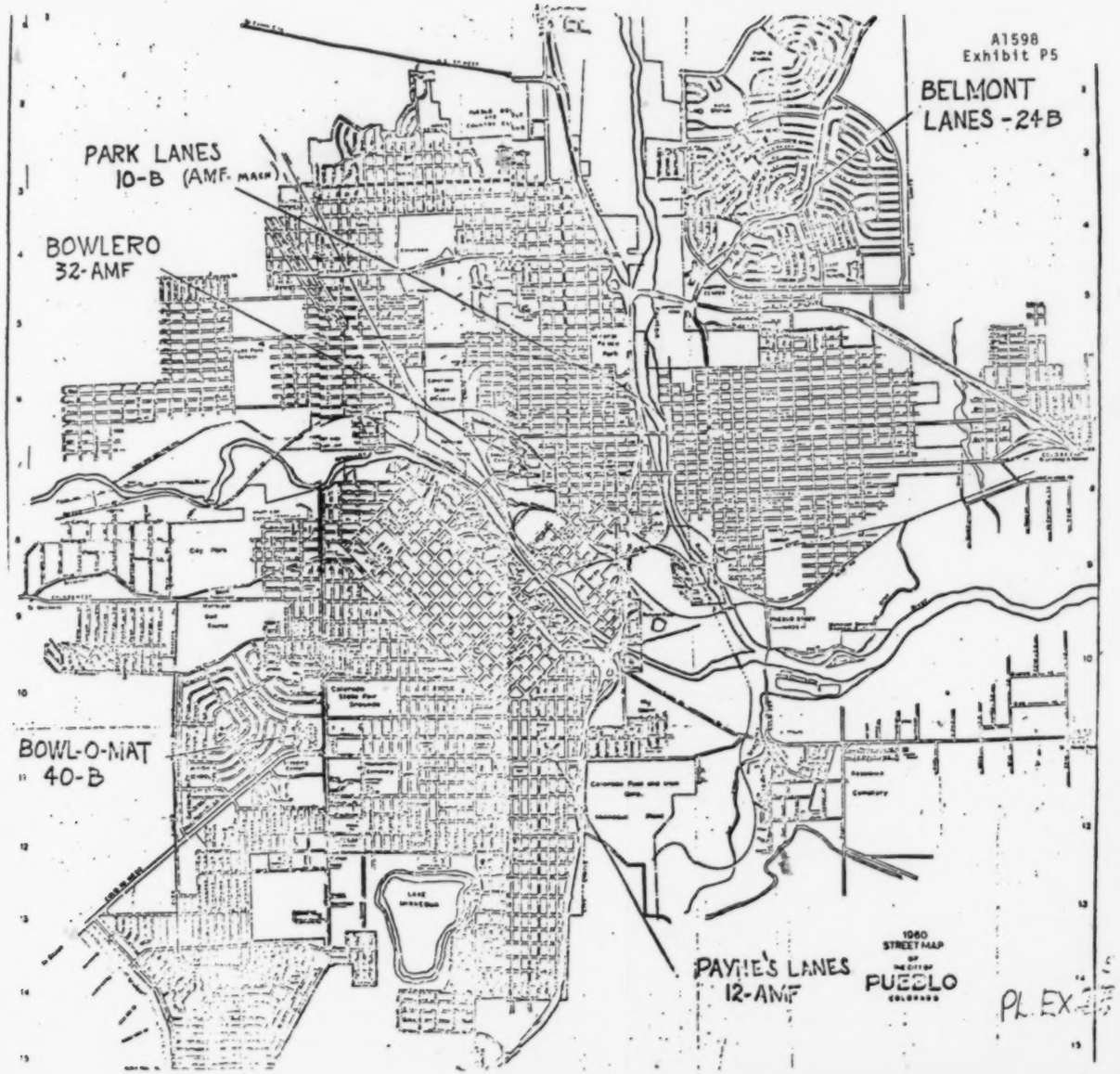
the originator of the first televised national bowling show "Championship Bowling", which has been on television screens for some four years. Bowling proprietors all over the United States have loudly acclaimed this television show as having been a strong force in helping to increase their business.

The public today demands and expects comfort, convenience and styling which only a modern business can offer. The individual or groups who invest in the bowling business have found the same to be true of this business. Therefore, it is necessary that any installation contemplated be the most modern in styling and equipment. The bowling proprietors who combine the most modern and comfortable surroundings and outstanding services will have the establishment most desired by bowlers.

There is only one conclusion that can be drawn from the facts as presented in this analysis - a definite need for additional bowling facilities. The area as analyzed will support up to 100 lanes at the present time. Presuming that future growth in the area keeps pace with present growth, it is quite apparent that there will be an additional need for bowling and recreational facilities again in the future.

This analysis prepared by:

J.G. Callahan
Sales Engineer
Brunswick-Balke-Collender Company



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AMF PINSPOTTERS INC.
A SUBSIDIARY OF AMERICAN MACHINE & FOUNDRY COMPANY
Westbury, Long Island, New York • EDgewood 3-6900

8 X 6

May 31, 1961

Mr. Daniel Parke Lieblich
152 Market Street
Paterson, N. J.

Dear Mr. Lieblich:

Following your telephone call about ten days ago, I investigated the matter of proposed new bowling facilities in Pueblo, Colorado.

Our Denver office has advised me that there is a total population of approximately 90,000 being served by a total of 94 bowling lanes which includes your new 40 lane Bowl-O-Mat and a 24 lane house installed not too long ago by our company. It is my understanding that the Pueblo area population contains 25,000 people of extremely poor financial means and that the steel industry in Pueblo is operating at about 60% capacity. These facts alone would convince us that new bowling facilities for Pueblo are not justified. On the basis of those facts we cannot entertain additional new bowling lane business in the area at this time.

I am told there is activity in the area now to install 24 lanes on the east side of town and further that the proposed operators have indicated a preference for competitive equipment. In order to protect your investment in the area you may want to contact the other supplier of equipment in order to determine their feelings in the matter. In any event, Mr. Lieblich, you may be assured that we do not consider Pueblo as a justifiable site for a new bowling center installation at this time.

Thank you for contacting us and please feel free to call on us at any time we may be of assistance. With kindest personal regards, I am

Sincerely yours,

G. Lindsay Crump

G. Lindsay Crump
Asst. to Vice President-Sales

GLC:oek

A1599
Exhibit P6

PL. EX. 286

PX6-p.2.

[illegible]

Mr. [illegible] Cobban

J. G. Thomas

June 2, 1961

Mr. [illegible]
Mr. [illegible]
Mr. A. D. [illegible]

After careful consideration of all the facts involved in the Pueblo location that you outlined in your letter of May 29, Home Office has decided that if the contract is submitted to Brunswick it will be rejected. The reason for this decision is that we feel the economy in Pueblo cannot support an additional 24 lanes at this time.

In the event the contract has already been signed by the time you receive this letter, will you and Art Covert inform the customer of our decision.

J. G. Thomas

JGT:mh

PL. EX. 286 id

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A1600
Exhibit P6

PX7

BELMONT LANES

PUEBLO, COLORADO

24 Lanes & P/S

6/5/62

Contract price	352,229.41
Cash payment	35,225.41
Deferred balance	317,000.00
Finance charge	88,761.12
Note	405,765.12

Payment schedule 64 @ $6340.08 beginning 10/15/62

Payment Record

It appears that on 10/19/62 $1,000 was paid

on 1/10/63 1,000 was paid

Payments rescheduled 6/11/63 for $404,670.02 — 1 pay @ 6630.02, 60 pay @ 6634.00

Contract was then rewritten sometime in Spring ? of 1964 with principal of $ 334,523

Interest of 120,428

$ 454,951

64 payments @ $7,109 commencing on 10/15/64.

Payments made:

1/15/65 $300.00

PLAINTIFF'S EXHIBIT P-7 C. 595.11

A1601
Exhibit P7

A1602
Exhibit P8

P X 8

PUEBLO BOWL-O-MAT, INC.

	8/31/61	8/31/62	8/31/63	8/31/64	8/31/65	8/31/66	8/31/67	8/31/68	8/31/69	8/31/70	8/31/71	8/31/72	TOTA
Lineage per lane	9,890	9,837	8,390	9,794	9,056	8,540	8,446	7,723	7,386	7,722	8,090	9,115	
Operating Cash Income	53,815	34,466	25,820	25,274	18,182	(3,551)	13,503	12,459	15,038	25,472	41,527	82,920	
Interest	33,484	17,162	(13,307)	24,110	30,206	32,806	36,100	34,353	33,027	33,652	33,439	23,148	
Depreciation	51,260	39,829	39,930	39,298	39,300	39,559	39,590	39,743	39,749	39,960	40,356	40,440	
Organization Expense	2,834	2,834	2,834	2,833	2,832	--	--	--	--	--	--	--	
Income (Loss)	(33,763)	(25,359)	(3,637)	(40,967)	(54,156)	(75,916)	(62,187)	(61,637)	($7,738)	(50,833)	(27,707)	(17,302)	(511,2

PUEBLO BOWL-O-MAT

	1965	%	1966	%	1967	%	1968	%	1969	%	1970	%	1971	%	1972	%	Eight Year Total	
Bowling	$168,779		$157,068		$159,922		$150,210		$144,576		$154,999		$171,838		$190,972		$1,298,364	
Shoe Rental	3,859	2%	3,511	2%	3,325	2%	3,506	2%	3,445	2%	4,036	3%	6,950	4%	8,390	4%	37,022	3%
Snack Bar	21,494	13%	19,856	13%	25,943	16%	29,035	19%	27,791	19%	36,372	23%	48,897	28%	44,100	23%	253,488	20%
Bar	44,704	26%	25,887	16%	24,410	15%	29,073	19%	27,194	18%	43,394	28%	64,465	38%	64,621	34%	323,748	25%
Pro Shop	4,744	2%	6,034	4%	5,777	4%	4,052	3%	3,352	2%	3,872	2%	6,865	4%	9,982	5%	44,678	3%
Mach. & Misc.	5,196	3%	6,132	4%	7,209	5%	6,232	4%	7,986	6%	10,104	7%	8,498	5%	6,298	3%	57,655	4%
	$248,776		$218,488		$226,586		$222,108		$214,344		$252,777		$307,513		$324,363		$2,014,955	

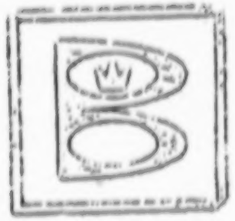
Net Income % after cost of goods and labor:

	Bar	Snack Bar	Pro Shop
1972	55%	21%	37%
1971	54%	20%	16%
1970	44%	17%	(30%)
1969	35%	16%	(30%)
1968	38%	17%	17%
1967	33%	18%	11%
1966	32%	0	42%
1965	51%	13%	37%
Total	342%	122%	100%
Eight Year Aver.	43%	15%	13%

For each additional $1,000 of Bowling Revenue, net income increases:

Bowling			$1,000	@	90%	=	$ 900.
Shoe Rental	@	3% =	30	@	90%	=	27.
Snack Bar	@	20% =	200	@	15%	=	30.
Bar	@	25% =	250	@	43%	=	108.
Pro Shop	@	3% =	30	@	13%	=	4.
Mach. & Misc.	@	4% =	40	@	100%	=	40.
							$1,109.

PX 10 - 2



EVALUATION REPORT # 76

LEMAR, INC.

POUGHKEEPSIE, NEW YORK

PL EX 344 LC

FILE COPY

A1604
Exhibit P10

[PLF BENSINGER EX 3 filed 7-P-05]

REPORTING DATE: MARCH 29, 1965

BY:

W. F. Francis

Mr. W. F. Francis
Project Director
Management Services

Approved By:

J. F. Reichert

MR. J. F. Reichert
Manager - Management Services

EVALUATION REPORT # 76

LEMAR, INC.

POUGHKEEPSIE, NEW YORK

A1605
Exhibit P10

CRITERIA CHECKLIST FOR BCOD OPERATING POLICIES

NAME OF ESTABLISHMENT LEMAR, INC. CITY AND STATE POUGHKEEPSIE, NEW YORK

EVALUATION NO. 76 DATE OF EVALUATION 3/29/65 BCOD INTEREST X YES ___ NO

X 1. Evaluated site is 16 lanes or more. 26 (NUMBER OF LANES)

X 2. Market area will generate sufficient lineage to be profitable. 780 to 1 (RATION PER LANE)

X 3. Evaluated site will generate a cash flow the first year of:

A. Positive Cash Flow $ 28,389 B. Negative Cash Flow $ ---

X 4. Evaluated site will generate cumulative cash flow within 24 months after take-over of $ 62,895.

X 5. Negative cash flow in the first year does not exceed $1,000 per lane. Negative cash flow, per lane, in the first year is $ ---.

X 6. Evaluated site will generate a profit in the third year of $ 29,293.

X 7. Lease for land and building does not exceed 34 months and contains an additional 10-year option and one or more 5-year options. Evaluated site lease is for 24 months with options of 2 years, 10 years, and 5 years.

X 8. In the event of a sale to a third party, lease contains provisions to release Brunswick from lease obligations beyond the 34th month.

X 9. Lease does not provide an element of profit on the investment to the lessor. Lease is restricted to a net amount of $700-$1,200 per lane. Evaluated site is for $ 1,000 per lane.

N/A 10. If not restricted, the long-term lease provides a 20% return on the investment.

X 11. Obligations for chattels are restricted to the lowest negotiable price not to exceed $1,000 per lane and if possible, do not require any cash outlay to obtain previously developed equity.

X 12. No commitment has been made to an obligation for purchase or lease without copies of the legal documents or written representations as to the contents being furnished by contracting party.

THE FOLLOWING COMPARISONS REFLECT COMPUTATIONS PRIOR TO ANY TAX ADJUSTMENTS:

	1965	1966	1967
BCOD CASH FLOW PROJECTIONS	$29,395	$41,156	$46,765
COST OF PHYSICAL REMOVAL	22,360	--	--
INTERIM LEASE REVENUE	24,708	26,952	28,080
PAYMENTS ON AN 8-YEAR CONTRACT	32,874	65,748	98,622
ORIGINAL SCHEDULED PAYMENTS	43,680	43,680	43,680

A1606
Exhibit P10

This evaluation has been reviewed by the member of the Operations' Section whose signature appears below:

Bernard Rudo

COMMENTS:

June 18, 1965

I feel that this location will need considerable work as it has been mismanaged ever since it was rebuilt in 1961. The physical plan is not the most ideal, but I think that this is offset by the fact that it has more walk-in business than most of its competitors. The rapid growth of the surrounding area as well as the change in road pattern definitely indicates that we should make an attempt to operate this location.

A1607
Exhibit P10

LEMAR, INC.
POUGHKEEPSIE, NEW YORK

CONTENTS:

I. BACKGROUND

II. CONCLUSIONS AND RECOMMENDATIONS

A. MARKET

B. OPERATION

C. ECONOMY

D. COMPETITION

E. PHYSICAL PLANT

F. SITE ANALYSIS

G. LEASE

APPENDIX SECTION:

I. FINANCIAL ANALYSIS

II. MANAGEMENT AND OPERATIONS ANALYSIS

III. MARKET AND SITE ANALYSIS

A. LOCATION

B. SOCIO ECONOMIC

C. POPULATION

D. COMPETITION

E. SITE

F. PHYSICAL PLANT

A1608
Exhibit P10

LEMAR, INC.

POUGHKEEPSIE, NEW YORK

I. BACKGROUND

This 26 lane Gold Crown Center opened for business in the fall of 1962 as a Lence Lanes establishment. The house was a replacement for a 24 lane operation which was operated by Mrs. Ethel Levine, under the name of Dutchess Recreation Bowling Alleys, Inc., that was destroyed by fire in 1961.

The Levine operation was originally established as a 16 lane center in 1945. Eight lanes were added around 1954.

Lence Lanes was evicted by the landlord, Mrs. Levine, in the spring of 1963. They had made no payments to Brunswick.

Mrs. Levine then purchased the equipment from Brunswick on an eight year staggered payment program. Though payments have been made, no full year's payments were complete.

It should be noted that Mrs. Levine feels that she was overcharged by approximately $85,000 for the equipment. She still feels that Brunswick will renegotiate the contract to compensate her for the alleged overcharge.

The Credit Department has been unable to negotiate any payment program, within policy, that can be met by the present operation.

A1609
Exhibit P10

II. RECOMMENDATIONS AND CONCLUSIONS

It is recommended that BCO take the necessary steps to assume control of this operation as soon as possible. This recommendation is based on the following facts:

A. Operation

This establishment is presently generating an in season lineage of 29+ lines per lane per day. The reason for the low annual lineage (22 lines per lane) is a drop of 65% during the summer months. It is anticipated that solid summer programs will be successful in lowering this drastic decrease.

B. Market

The population in the designated primary draw area is presently 97,500, with an effective total of 95,400 eliminating 50% of the non-whites due to social and economic considerations. This is a lanes to person ratio of 780 to 1. This is below the estimated proper ratio of 950 to 1 for this type of market.

C. Economy

Industry forms the base of the economy in this market. The International Business Machine Corporation is far and away the core with the employment of over 11,000.

The City of Poughkeepsie is the retail trading area for all of central Dutchess County and carries a sales activity index of 238 which is higher than that of New York City.

Average household incomes in the city are $7,390 compared to a county figure of $9,092 and a state figure of $8,279.

Industrial development continues at a good pace. Land is available and local financing programs have been set up for the use of investors.

D. Competition

Indirect competition during the winter months is low. During the summer months, a myriad of outdoor activities present severe competition. This is offset somewhat by an influx of tourists to this area.

There are four competitive commercial lanes in this market area. In addition, IBM has eight fully automated lanes on their premises for the use of their employees. This is a highly competitive bowling market.

E. Site

The subject establishment is located just north of the downtown area on the main north-south artery in a residential district.

Travel to the site from the south and the east requires traversing the downtown area. This is a problem during the daytime hours, Monday through Saturday.

A new roadway, circumventing the downtown area from the south, is now under construction. This roadway will terminate within one quarter of a mile from the subject site, greatly improving access from the southern part of the market area.

F. Physical Plant

Dutchess Lanes, the subject, is housed in an older building of concrete and steel construction. The front exterior and the front entry are attractive. The control counter, the snack bar and the cocktail lounge are attractive.

The sides and rear walls of the exterior of the building need painting. The parking area is inadequate. The lanes have been squeezed in through the use of rear wall machines, the elimination of scoring chairs and the removal of some sections from the 211 seating arrangement.

A garage has been annexed to the building. It provides for poor lavatory facilities, a combination locker room and nursery and a storage area.

This is not a good physical setup.

G. Lease

The landlord is presently balking at the Brunswick lease offer of $26,000 gross annually, plus 10% of all gross income over $170,000. This guarantees the landlord approximately $3,500 annually over building costs.

This building was formerly leased at an annual gross rate of $36,000.

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LEMAR, INC.
POUGHKEEPSIE, NEW YORK
PRO FORMA BALANCE SHEET

	B C O FORECAST 1965	1966	1967
ASSETS:			
Current Assets:			
Cash and Inventory	$ 10,400	$ 10,400	$ 10,400
Fixed Assets:			
Lanes & Pinsetters	$221,000	$221,000	$221,000
Less: Reserve for Depreciation	27,300	54,600	81,900
Net Brunswick Equipment	193,700	166,400	139,100
Net Fixed Assets	$193,700	$166,400	$139,100
Total Assets	$204,100	$176,800	$149,500
LIABILITIES & NET WORTH			
Brunswick Investment	$202,826	$167,486	$128,831
Retained Earnings or (Deficit)	1,274	9,314	20,669
Total Liabilities & Net Worth	$204,100	$176,800	$149,500

NOTE: Original Brunswick Investment:

Cash and Inventory	lanes @ $400
Lanes and Pinsetters	lanes @ $8500

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LEMAR, INC.
POUGHKEEPSIE, NEW YORK
PROFIT AND LOSS - CASH FLOW

	1964	B C O FORECAST 1965	1966	1967
REVENUES:				
Bowling	$102,950	$102,950	$112,300	$117,000
Shoe Rental	3,200	3,200	3,370	3,500
Pro Shop	3,200	3,200	3,370	3,500
Snack Bar	22,600	22,600	24,700	25,700
Cocktail Lounge	38,600	38,600	39,300	41,000
Other Revenue	3,000	3,000	3,000	3,000
Total Revenue	$173,550	$173,550	$186,040	$193,700
COST OF GOODS:				
Pro Shop	$ 2,400	$ 2,400	$ 2,530	$ 2,625
Snack Bar	11,300	11,300	12,350	12,850
Cocktail Lounge	15,400	15,400	15,700	16,400
Total Cost of Goods	$ 29,100	$ 29,100	$ 30,580	$ 31,875
GROSS PROFIT	$144,450	$144,450	$155,460	$161,835
EXPENSES:				
Operating Expenses	$ 97,319	$ 88,700	$ 86,700	$ 86,700
Bruhswick Depreciation	34,700	27,300	27,300	27,300
Building Rental	27,700	26,355	27,604	28,370
Total Expenses	$157,719	$142,355	$141,604	$142,370
Net Profit (Loss) Before Taxes	$(15,269)	$ 2,095	$ 13,856	$ 19,465
Federal Income Tax		$ (1,006)	$ (6,650)	$ (9,343)
Net Profit (Loss) After Taxes		$ 1,089	$ 7,206	$ 10,122
ADD: NON CASH ITEMS:				
Total Depreciation		$ 27,300	$ 27,300	$ 27,300
NET CASH FLOW (DEFICIT)		$ 28,389	$ 34,506	$ 37,422
SUPPLEMENTARY DATA:				
BCOD Depreciation		$ 17,472	$ 17,472	$ 17,472
Net Profit (Loss) Before Taxes		11,923	23,684	29,293
Net Profit (Loss) After Taxes		6,200	12,316	15,232
Net Cash Flow (Deficit)		23,672	29,788	32,704

LEMAR, INC.
POUGHKEEPSIE, NEW YORK
EXPENSE DETAIL

	BCO FORECAST			
	1964	1965	1966	1967
Operating Expenses:	✓			
Salaries and Wages	$ 49,500	$ 50,000	$ 50,000	$ 50,000
Payroll Taxes and Benefits	3,200	4,500	4,500	4,500
Licenses and Taxes	5,000	2,000	2,000	2,000
Insurance	4,885	2,600	2,600	2,600
Utilities	9,000	9,000	9,000	9,000
Repair and Maintenance	9,000	5,200	5,200	5,200
Advertising and Promotion	8,900	5,200	5,200	5,200
Supplies	4,834	5,200	5,200	5,200
Other Expenses	3,000	3,000	3,000	3,000
Start-Up Costs (A)		2,000		
Total Operating Expense	$ 97,319	$ 88,700	$ 86,700	$ 86,700
Depreciation:				
Bowling Equipment	$ 34,700	$ 27,300	$ 27,300	$ 27,300
Total Brunswick Depreciation	$ 34,700	$ 27,300	$ 27,300	$ 27,300
Building Rental	$ 27,699	$ 26,355	$ 27,604	$ 28,370

NOTE: (A) Start-Up Costs - cleaning and painting building interior.

A1614
Exhibit P10

LEMAR, INC.
POUGHKEEPSIE, NEW YORK
OPERATING STATISTICS

	BCO FORECAST			
	1964	1965	1966	1967
Bowling Lineage:				
Number of Lanes	26	26	26	26
Days Open	360	360	360	360
Total Lineage	205,900	205,900	224,600	234,000
Average Lineage Per Lane/Yr.	7,920	7,920	8,640	9,000
Average Lineage Per Lane/Day	22	22	24	25
Revenue Per Line	$ .50	$ .50	$ .50	$ .50
Total Bowling Revenue	$102,950	$102,950	$112,300	$117,000
Shoe Rental:				
Per Cent to Bowling Revenue	3%	3%	3%	3%
Pro Shop:				
Per Cent to Bowling Revenue	3%	3%	3%	3%
Snack Bar:				
Per Cent to Bowling Revenue	22%	22%	22%	22%
Cocktail Lounge:				
Per Cent to Bowling Revenue	35%	35%	35%	35%
Gross Profit Ratio:				
Pro Shop	25%	25%	25%	25%
Snack Bar	50%	50%	50%	50%
Cocktail Lounge	60%	60%	60%	60%
Other Revenue	$ 3,000	$ 3,000	$ 3,000	$ 3,000

A1615
Exhibit P10

A1616
Exhibit P10

BOWLING OPERATING STAFF & PAYROLL

Title	Sal. or Hr. Rate	Weekly Total	Annual Total	9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9
MANAGER	$10,000		$10,000	DAYS OFF
COUNTER (PT)	1.25	$20.00	1,000	X 6 DAYS X
COUNTER	2.00	84.00	4,400	X 6 DAYS X
COUNTER	1.50	72.00	3,750	X 6 DAYS X
MECHANIC	2.00	96.00	5,000	X 6 DAYS X
LANE & BLDG. MAINT.	2.00	92.00	4,700	X 6 DAYS X
PORTER	1.25		2,544	X 3 & 4 DAYS X
PINCHASER - 2	1.50	60.00	3,190	

$31,040 Total

SNACK BAR OR RESTAURANT

GRILL/WAITRESS	$ 1.25		$ 3,120	X 6 DAYS X
GRILL/WAITRESS	1.25		3,120	X 6 DAYS X
GRILL/WAITRESS	1.25		1,040	DAYS OFF

$ 7,280 Total

COCKTAIL LOUNGE

BARTENDER	$ 2.00		$ 4,800	X 6 DAYS X
BARTENDER	1.75		1,235	FRIDAY AND SUNDAY
WAITRESS	1.25		2,880	6 DAYS X

$ 9,136 Total

Payroll Totals: $3,504 Bowling: $7,280 Snack Bar & Restaurant; 39,136 Cocktail Lounge.

GRAND TOTAL $50,000

APPENDIX SECTION

I. FINANCIAL ANALYSIS

The preceding financial statements are based on unverified statements for the period ending September, 1964, given to Brunswick by the proprietor.

The lineage projections are reasonable for this market and should be attained with a reasonable promotion program.

The revenue per line is on a 50¢ basis. In actuality, lineage is higher with a lower revenue per line. The 50¢ figure was used so that a legitimate comparison could be made.

The shoe rental, snack bar and cocktail lounge revenues are based on present revenues increased at the same rate as the bowling.

The start up costs of $2,000 will be necessary to cover the costs of painting and cleaning the interior of the building, plus license transfer costs.

The indicated lease cost of $26,000 gross was the Brunswick offer on the usual 2 year, 2 year, 10 year and 5 year program. In addition, Brunswick will pay 10% of all gross income over $170,000. This is a legitimate offer and this should cover this lease, though it will probably take forceful legal action to consummate this deal.

This lease cost represents a $10,000 annual reduction.

II. MANAGEMENT AND OPERATION ANALYSIS

A. Management

The bowling center is presently being managed by Mrs. Theodora Spier, a married daughter of the landlord.

Mrs. Spier has been the manager since the reopening under the ownership of Lance Lanes. She has been working in and around bowling centers all of her life. She knows the business and she does an effective job of supervising the interior operation. She has also accomplished good results in the promotion of women daytime leagues. However, she is admittedly weak on the promotion and development of men's leagues.

B. Operation

During the league season, this establishment generates a lineage of 29 lines per lane per day. Approximately 75% of this is in league lineage. There is a good daytime league program and a full first shift in the evening. However, the second shift is practically bare.

The personnel appears to be careless in fulfilling their duties and do not pay sufficient attention to customer service. Housecleaning is only fair, though the machines appear to be well maintained.

This internal operation is lacking in leadership and direction.

External promotion work among the men of the area has been sadly lacking.

III. MARKET AND SITE ANALYSIS

A. Location

Poughkeepsie, county seat of Dutchess County, is situated on the eastern shore of the Hudson River, approximately 100 miles north of New York City. For the purposes of this evaluation, the primary draw area is considered to be the City of Poughkeepsie and the townships of Poughkeepsie, Hyde Park, Pleasant Valley and La Grange.

B. Socio-Economic

The economy of the Poughkeepsie area is industrially based. The International Business Machine Corporation is far and away the economic core of this area with an employment of over 11,000.

Some of the other major products and the number of employees employed in their manufacture are bearings (2,500), pumps and separators (2,250), printing and lithography (1,800), electronic instruments (1,400), and electrical products (370).

Industrial development, spear-headed by IBM, is moving ahead in dramatic fashion. There is land available and the local commission has various financing plans set up to aid interested industries.

The City of Poughkeepsie is the retail trading center for all of central Dutchess County. The sales activity index of 238 compared to a county index of 105 indicates that the core city draws shoppers from all surrounding areas. The average household income within the market area is $7,390 compared to a county average of $9,092, and a state average of $8,279. 44.7% of the households have incomes between $4,000 and $10,000, with an additional 13.9% in the $2,500 to $4,000 bracket. A high 21% have incomes over $10,000. This is due to the influence of IBM.

This is a good economic profile upon which to develop a profitable bowling activity.

C. Population

The population of Dutchess County increased by 28.7% during the decade from 1950 to 1960 to a total of 176,008. It has continued to increase to its 1964 population of 192,493, a gain of 9.4% since 1960.

During this same period, the population of the City of Poughkeepsie decreased 6.6% to 38,330, while the population of the Town of Poughkeepsie increased 60.9% to 32,164. Also during this period, the population of the Town of Hyde Park increased 106.7% to 12,681; the Town of La Grange increased 166.6% to 6.079; and the Town of Pleasant Valley increased 47.1% to 4,064. These dramatic population increases were caused by the industrial boom created by IBM.

These population trends have been continuing at a slower rate since 1960. For example, the population of the core city has decreased to 37,300 in 1964, while the surrounding cities continue to grow.

The 1964 estimated population for the outlined primary market area is 97,300. This is expected to increase to over 105,000 by 1970.

Non-whites make up 9.6% of the population of the core city and 5.8% of the county. This locates the vast majority of non-whites within the core city. Because of social and economic considerations, 50% of these non-whites must be discounted from our total population. This leaves us an effective population of 95,400.

This population breaks down into the following age groupings: 29.4% under 18 years - 57.1% between 18 and 64 - 13.5% 65 and over. This is a good population profile upon which to develop a profitable bowling activity.

D. Competition

Indirect competition during the winter months is minimal in this area. During the summer months, a myriad of outdoor activities presents severe competition. This is slightly offset by an influx of tourists to the area, but it is still a severe problem.

There are three competitive bowling centers within the primary draw area and one on the southern fringe of the draw area which must be considered.

A synopsis of these houses is as follows:

Hoe Bowl County Lanes - (3 miles from subject)
30 AMF lanes, cocktail lounge, snack bar, good concourse, adequate parking. This was originally a 20 lane house to which 10 lanes were added in 1963. There are presently 280 teams bowling in organized league play at this establishment. This establishment is estimated to generate 30 lines per lane per day during the season. It should be noted that this house has closed down entirely during July and August during the past three years.

Hyde Park Lanes - (6 miles from subject)
16 lane Gold Crown establishment, modern in all respects, with cocktail lounge, snack bar and good parking. There are 120 teams bowling in organized league play. The estimated annual lineage generated at this house is 22 lines per lane per day.

Mardi-Bob Bowl - (2½ miles from subject)
38 lane AMF house, modern in every respect, cocktail lounge, snack bar and good parking. There are presently 390 teams bowling in organized league play. The estimated annual lineage per lane is 32. This is the best location in the market.

Holiday Bowl-O-Mat - (8 miles from subject)
36 AMF lanes, modern in every respect, cocktail lounge with entertainment four nights, snack bar and good parking. There are 364 teams bowling in organized league play. The estimated annual lineage is 32 lines per lane per day. This house is located just beyond the southern fringe of the outlined primary draw area. Therefore, it is considered only 40% effective in this market.

Including the subject 26 lanes, there are 125 effective lanes serving a present population of 97,300 persons. This is a lanes to person ratio of 780 to 1. The estimated proper lanes to person ratio in a market of this type is 1,000 to 1.

The subject house should be able to attain and maintain the projected lineages; however, three of the competitive houses are almost completely double shifted five days a week.

E. Site Analysis

Dutchess Lanes, the subject house, is located on the main northern artery just outside downtown Poughkeepsie. It is situated in the heart of a heavy residential area.

Travel to the site from the south and the east requires driving through the downtown area. This is not a serious problem in the evenings, but it is a problem weekdays and Saturdays.

A new roadway circumventing the downtown area from the south is now under construction. This roadway will terminate within one quarter of a mile from the subject site and it will enhance the value of this location.

F. Physical Plant

The building in which the subject lanes are housed is of concrete and steel construction. The outside front and the entry way are attractive.

This building originally housed 16 lanes. An addition of 8 lanes at right angles to the existing lanes was made in 1954. After the fire, 26 lanes were installed in line. To accomplish this feat, rear wall machines were used, sections were removed from the 211 settee arrangement and no scoring chairs are used. Even with this arrangement, to reach the control counter from the main parking lot, a customer must walk in a six foot corridor behind the bowler's settees, the full width of the 26 lanes. When leagues are bowling, this becomes an obstacle course.

In 1963, an adjacent garage was purchased and joined to the main building. In this area, new toilets were installed (a poor setup), a nursery and locker room was developed and the remaining area is used for storage.

The exterior of the building needs a good cleaning. The parking lot is unpaved and inadequate.

The control counter, the snack bar and the cocktail lounge are situated in the main entry. These are attractive and in good condition.

LEASE INFORMATION DISTRIBUTION

~~1. Redo~~

2. J. Reichert
3. J. Curran
4. A. Denkins
5. K. Gallopo
6. C. Poll
7. J. Webster
8. L. Luzon
9. Regional Food & Beverage Manager
10. Regional Service Manager
11. Regional Manager
12. District Manager
13. Establishment Manager
14. Lease File
15. L. Willner
16. D. Zirk
17. S. Staubitz
18. Property Administration Associates
19. S. E. Irons
20. Extra File

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A1623
Exhibit P11

0X 11

HOLIDAY BOWL-O-MAT

	1965	%	1966	%	1967	%	1968	%	1969	%	1970	%	1971	%	1972	%	Eight Year Total	%
Bowling	$177,306		$181,841		$164,676		$148,670		$141,620		$165,707		$198,421		$226,123		$1,404,364	
Shoe Rentals	4,867	3%	5,077	3%	4,688	3%	4,706	3%	5,556	4%	7,306	3%	8,244	4%	9,345	4%	49,789	4%
Snack Bar	32,075	18%	29,677	16%	22,574	14%	19,772	13%	18,958	13%	24,352	15%	27,912	14%	29,273	13%	204,593	15%
Bar	115,984	65%	100,229	55%	130,434	79%	102,141	69%	102,217	72%	85,984	52%	82,417	42%	145,125	64%	864,531	62%
Pro Shop	7,568	4%	5,984	3%	4,546	3%	4,096	3%	3,419	2%	5,978	3%	12,404	6%	16,358	7%	60,353	4%
Mach. & Misc.	3,367	2%	4,559	3%	5,840	2%	4,517	3%	3,074	2%	3,081	2%	3,401	2%	3,124	1%	30,963	2%
	$341,167		$327,367		$332,758		$283,902		$274,844		$292,408		$332,799		$429,348		$2,614,593	

Net income % after cost of goods and labor:

	Bar	Snack Bar	Pro Shop
1972	58%	18%	38%
1971	50%	25%	40%
1970	54%	30%	29%
1969	52%	10%	20%
1968	50%	11%	36%
1967	57%	4%	20%
1966	52%	15%	36%
1965	55%	23%	30%
Total	428%	136%	249%
Eight Year Aver.	54%	17%	31%

For each additional $1,000 of Bowling Revenue, net income increases:

Bowling			$1,000	@	90%	=	$ 900.
Shoe Rentals	@ 4%	=	40	@	90%	=	36.
Snack Bar	@ 15%	=	150	@	17%	=	25.
Bar	@ 62%	=	620	@	54%	=	335.
Pro Shop	@ 4%	=	40	@	31%	=	12.
Mach. & Misc.	@ 2%	=	20	@	100%	=	20.
							$1,328.

A1624
Exhibit P12

PX 12

HOLIDAY BOWL-O-MAT

	9 months 8/31/61	8/31/62	8/31/63	8/31/64	8/31/65	8/31/66	8/31/67	8/31/68	8/31/69	8/31/70	8/31/71	8/31/72	TOTAL
Lineage per lane	10,831	11,717	11,210	10,526	10,213	10,040	9,026	8,098	7,513	8,333	9,754	10,526	
Operating Cash Income	26,128	78,691	74,337	77,700	53,287	34,429	48,219	(10,022)	(20,480)	5,068	39,762	75,388	
Interest	8,011	9,009	12,508	11,315	7,875	3,198	2,586	1,433	2,458	4,341	4,205	2,673	
Depreciation	14,227	14,598	21,151	25,788	26,172	27,018	27,701	27,735	28,244	28,519	30,227	31,292	
Organization Expense	1,569	2,095	2,095	2,098	2,100	372	-0-	-0-	-0-	-0-	-0-	-0-	
Income (LOss)	2,321	52,989	38,583	38,499	17,140	3,841	17,932	(39,190)	(51,182)	(27,098)	1,821	47,871	103,527

A1625
Exhibit P13

PX 13

BOWL-O-MAT PARAMUS

	8/31/61	8/31/62	8/31/63	8/31/64	8/31/65	8/31/66	8/31/67	8/31/68	8/31/69	8/31/70	8/31/71	8/31/72	TOTAL
Lineage per lane	13,830	12,192	11,250	10,570	9,355	8,117	7,490	6,829	6,863	6,906	6,996	8,780	
Operating Cash Income	105,460	73,278	50,269	62,745	45,172	7,820	153	(13,572)	(4,646)	(1,609)	10,420	43,207	
Interest	18,596	17,481	15,299	10,478	9,384	8,812	9,247	9,762	10,158	11,055	12,901	12,554	
Depreciation	47,461	36,757	37,342	37,427	37,432	38,902	39,555	40,523	40,605	40,956	41,165	42,466	
Organization Expense	1,657	1,621	1,550	-0-	-0-	-0-	-0-	-0-	---	---	---	---	
Income (Loss)	37,746	17,419	(3,922)	14,840	(1,644)	(39,894)	(48,649)	(63,857)	(55,409)	(55,153)	(44,536)	(10,542)	(253,601)

PARAMUS MARKET

NUMBER OF LANES	NAME OF CENTER	DISTANCE FROM BOWL-O-MAT	
36	Ten Pin	1/2 mile	ALL BCOD
32	Fairlawn	3 miles	
40	Lodi	5 miles	
40	Interstate	7 1/2 miles	
148			
36	Bowl-O-Mat		
18	Rt. 4	2 miles	
38	Esposito	1 1/2 miles	
28	Martones	3 1/2 miles	
26	Eclipse	4 miles	
50	Bowler City	2 1/2 miles	
40	Club 300	5 1/2 miles	
236			
384			

384 ⟌ 148 = 39% = BCOD has 39% of market

3/16/73

A1626
Exhibit P14

PARAMUS BOWL-O-MAT

	1965	%	1966	%	1967	%	1968	%	1969	%	1970	%	1971	%	1972	%	Eight Year Total	
Bowling	$160,692		$143,437		$136,573		$125,667		$136,137		$138,674		$148,482		$195,775		$1,185,437	
Shoe Rentals	5,298	3%	4,703	3%	4,645	3%	4,251	3%	5,452	4%	6,064	4%	7,981	5%	10,939	6%	49,333	4%
Snack Bar	35,318	22%	47,136	33%	61,558	45%	49,913	40%	50,136	37%	51,093	37%	42,639	29%	40,886	21%	378,679	32%
Bar	59,221	37%	60,131	42%	54,914	40%	49,097	39%	47,220	35%	34,891	25%	43,495	29%	56,867	29%	405,836	34%
Machine & Misc.	4,006	2%	4,617	3%	3,801	3%	3,601	3%	5,512	4%	4,639	3%	2,725	2%	3,058	2%	31,959	3%
	$264,535		$260,024		$261,491		$232,529		$244,457		$235,361		$245,322		$307,525		$2,051,244	

Net income % after cost of goods and labor:

	Bar	Snack Bar
1972	54%	16%
1971	44%	19%
1970	31%	6%
1969	28%	8%
1968	32%	3%
1967	27%	22%
1966	37%	23%
1965	46%	21%
Total	299%	118%
Eight Year Aver.	37%	15%

For each additional $1,000 of Bowling Revenues, net income increases:

Bowling			$1,000	@	90%	=	$ 900.
Shoe Rentals	@	4% =	40	@	90%	=	36.
Snack Bar	@	32% =	320	@	15%	=	48.
Bar	@	34% =	340	@	37%	=	126.
Mach. & Misc.	@	3% =	30	@	100%	=	30.
							$1,140.

EXTRA COPY

AT OPEN CONVENTION SESSION

PLAINTIFF'S EXHIBIT

3/9/73

Hanigan Discusses Brunswick

PL. EX 104 ed.

Probably no single presentation during BPAA's 33rd annual convention so thoroughly captured the interest of all BPAA members as the speech delivered by John L. Hanigan, president of Brunswick Corporation, before an open session on June 24. Therefore, Mr. Hanigan's remarks are reprinted here in full. Another article, dealing with the reaction of the BPAA membership to these remarks and other related items, appears on next page.

I AM NEW TO THIS business, and that is one of the reasons why I am so pleased to be here with you today. I want to just accomplish two things: one is just to talk about your business and the second is to introduce to you Jim Urbanek, who is the brand new president of our Bowling Division. Jim's been on the job for about a week and I thought it would be a little rough to ask him to talk to you with that short experience.

In talking business to you, I would like to review two things today. The first thing that I want to go over are the new policies that the Brunswick Corporation has adopted in the past year. And the second thing that I want to talk about at some length are the guide lines that our legal people have laid down for us in the conduct of our retail bowling operations that you all know of. I have been led to believe by many letters that this would be of some interest to you and, therefore, I am going to go into it in some detail.

The first thing is our new policies. These consist of four different but related points. In the first place we have set up for our bowling equipment, firm prices. The second new policy is that not only will we have firm prices, but [illegible]. We also have, at this time, a more realistic credit policy. These three policies, gentlemen, are to make sure that nobody in the bowling business gets from Brunswick a better deal than anyone else gets. And you can rest assured that when you get our quotations for prices, terms and conditions of sale, that you have got the best there is. The fourth new policy or decision that we have made in the past year is to operate some bowling centers ourselves; and, I know that many of you are concerned with this decision.

When we made these policy decisions in the corporation, we anticipated some reaction from the bowling proprietors. And I can assure you that we have not been disappointed. We are convinced that these changes are sound, and it may surprise you to know that some of the bowling proprietors agree with us and there are also quite a few that don't. The reason that I say that these decisions and policies are sound is because they are for the good of the whole industry. They are aimed at making the bowling business a more profitable venture and, therefore, they are good for us too. We really are in the business of selling to you money-making machines. And if they do that, they are successful; and, we are. And if they don't, you and we are not.

The vast majority of bowling proprietors are happy with their business. They are happy with it because it is profitable and they are happy with it because they see a future. Attesting to this fact is the fact that more bowling proprietors are looking forward to expanding at some time in the future. There is a minority group, however, that is not doing so well. And at looking at this minority group who are unable to meet their obligations, we have analyzed the situation and there are three causes for their troubles. In the first place, their establishment may be in the wrong location. In the second place there may have been a lack of adequate capital in the business. In the third place there may be uninterested or inadequate management. And, gentlemen, these are the three reasons why bowling establishments fail. Now when we are faced with the situation that a proprietor is unable to pay us what he owes, we go all out and make an exhaustive search with him for [illegible]

Plf Hanigan Ex 9

EXHIBIT A-1

THE BOWLING PROPRIETOR

A1628
Exhibit P27

John L. Hanigan, Brunswick Corporation president, addresses an open session of BPAA's 33rd annual convention in San Juan, Puerto Rico.

Policies

of arranging things so that he can have a healthy and profitable business, because it is only in this way that we can profit. When we have exhausted all possibilities of helping, we are then faced with a decision. We can either repossess the equipment or we can let him go on not paying. There are only those two things.

We have decided in these cases that the right answer is repossession. And the reason for this is that we think it is unfair to other bowling proprietors who are paying us or our competitors, to give some people a free ride. After we have repossessed a house, we then analyze the situation by sending in a team of people who are prepared to do a thorough job. If the house is in the wrong location, there isn't much that we or anyone else can do about it. And in this case we have to physically remove our equipment. If, however, the problem is inadequate capital or management, we then are faced with a further choice. We can either sell the establishment or operate it. Now if we can sell it, we will. But, as you know, at this time with investors, the bowling business does not have too good a reputation. I think it should have. I think it's a very good business; but, the fact is it doesn't have. And, therefore, sales are kind of hard to come by. So in many cases, we are then forced to operate. Now the things that I have just gone through, I would like to sum up and put together.

When we are in trouble and a proprietor is in trouble we have four choices: we can repossess and remove our equipment, we can leave it in place and not collect, we can sell it for the equipment price or we can operate it and rehabilitate the business and sell it as a good business.

We have had letters from proprietors objecting to each of these four courses of action. And we decided you can't win them all and we might as well do the thing that is right for the bowling business, because whatever is right for the bowling business is right for us.

We believe that a house that is sick or that has been closed down is worse for your business than a healthy competitor. And I wish you would think that over. We also believe because of this that we should only pull our equipment out of the house physically as a last resort, because this gives the business of bowling a bad reputation in the area. The best solution that we see for you and for us is to operate until these houses are profitable and then to sell them on a multiple of earnings basis. A lot of people have said to me, "You'll never get that much." I don't see why not, because other businesses are sold on this basis and I don't see in what way the bowling business is different in as far as being a business is concerned. The thing that this will do, to sell for a multiple of earnings, is get people out of the habit of thinking of bowling establishments as pieces of equipment. A well-run bowling establishment is a going concern and has a much higher value than the simple value of the land, buildings or equipment that is installed therein. And we intend to do everything that we can to make sure that we increase the value of your investment in your business. So much for that.

When we decided to go into the operating business, we asked our legal counsel for advice as to what we must do to make sure that we obeyed the laws of the land. Lawyers can get pretty long-winded; but, I have a letter from our legal people (outside legal counsel), which covers fourteen points which they say we must do in order to be really right in this business. I am

See BRUNSWICK, page 65

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Exhibit P27

Brunswick . . .

(continued from page 35)

going to read them to you, because I think it's important that I get it right and I think it's important that you listen carefully, because I think these fourteen points will cover a lot of things that you have been worried about. I know they did for some of the people that I talked with here in the last few days. There is a lot of preamble in this letter from the lawyers; but, when we get down to the meat of it they say, "You have asked us to furnish legal guide lines for such bowling establishments to be operated by the Brunswick Corporation. Here they are:

"1. Where any such bowling establishment is to be operated by Brunswick Corporation directly, or indirectly through a corporate subsidiary, separate books and records should be kept, reflecting in detail the capital investment, income and expenses of each such establishment.

"2. Repossessed pinsetters and alleys in establishments taken over or newly set up for operation by Brunswick Corporation should be capitalized at Brunswick's current list prices applicable to the resale to others of like repossessed goods in similar condition.

"3. Brunswick Corporation may recondition, modernize or enlarge such establishments, using either new or repossessed Brunswick goods, in order to make them more efficient, attractive and profitable. In such cases, the cost of such Brunswick goods should be charged to the establishment at Brunswick's current list prices for the sale to others of like goods in similar condition."

These three points really are protecting you from unfair competition from bowling centers operated by us. We set them up as if they were independent entities, because that is the way we are going to have to sell them.

The fourth point:

"4. Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in each case that the location would support such establishment without impairing the business of any existing establishment in the area and that no other person or entity is available which is ready, able and willing to open an establishment in such location.

"5. Brunswick Corporation should not acquire any existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys unless it should appear that such establishment had become a failing business and that the operator had requested Brunswick to take it over.

"6. Bowling equipment and supplies received by any Brunswick-operated establishment from Brunswick Corporation should be charged to the establishment at Brunswick's current suggested list prices for the sale of similar supplies and equipment to bowling establishments by Brunswick distributors.

"7. In the event that any articles of bowling equipment or supplies sold by Brunswick Corporation should be in short supply, it should prorate the available supply in an equitable manner between Brunswick-operated establishments and unaffiliated Brunswick customers.

"8. A Brunswick-operated establishment may engage in advertising and promotion up to a level of expenditures comparable to that of soundly managed bowling establishments operated by others."

"9. Any advertising or promotional aid given by Brunswick Corporation to its own bowling establishments, apart from local advertising or promotion charged to the operating expenses of such establishments, should be made available on a proportionately equal basis to all other bowling establishment operators who are Brunswick customers.

"10. Lineage charges of any Brunswick-operated establishment should be maintained at as high a level as local competitive conditions reasonably permit. Special prices, terms and conditions for league play should be according to a non-discriminatory list adopted by such establishment and should be comparable to the prices, terms and conditions of reputable competitors, as nearly as might be determinable. Inducements used to obtain leagues should not be so attractive and persistent as to imperil the business of any existing establishment.

"11. Balls, bags, shoes and other merchandise sold in Brunswick-operated establishments should be sold at Brunswick's suggested retail list prices for the retail sale thereof in other bowling establishments.

"12. Brunswick bowling equipment and supplies handled by Brunswick-operated bowling establishments should not be fair-traded in sales to other bowling establishments in the same state."

We think that our fair trade policy is a good one. And we think that you do. And we are going to continue to fair trade. What this means, gentlemen, is that we can't sell Brunswick balls, bags and shoes, things that are fair-traded in our own establishments. We are going to have to sell something else under some other mark.

Point 13.

"13. In the purchasing of food, liquor, merchandise and supplies from sources other than Brunswick Corporation, Brunswick-operated establishments should obtain written statements from the sellers thereof that the prices paid and inducements received by such establishments do not discriminate against other bowling proprietors purchasing goods of the same grade and quality from the same sellers. Purchasing for Brunswick-operated establishments may be centralized, provided that the central buying agency should not induce or knowingly receive, directly or indirectly, any unlawful discrimination in prices, terms, conditions or services in connection with such buying.

"14. Neither Brunswick Corporation nor any subsidiary operating a bowling establishment should become a member of BPAA or of any local affiliate thereof, or similar organization

(continued on next page)

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Exhibit P27

(continued from previous page)

of bowling proprietors. No one employed by Brunswick Corporation or a subsidiary should agree or cooperate with any such organization or with any other bowling establishment operator to fix prices or to restrain or limit in any way competition in the opening or operation of bowling establishments.

"In the event that the foregoing guide lines do not sufficiently answer any questions which may arise with respect to particular circumstances or transactions, we shall be happy to discuss such questions with you when they arise."

This last one, the one that has to do with the BPAA, has been taken up rather exhaustively with your executive committee by our General Counsel the day before yesterday. I think it is clear why we feel the way we do and what steps can be taken so that we can join the BPAA, which we would very much like to do.

I know that some people are very suspicious of our motives in setting up retail establishments. People are afraid that we are trying to dominate the bowling business. To give you some idea of how ungrounded these fears are, we figured out that the investment that you have in bowling establishments exclusive of buildings and land is four billion, four hundred million dollars. If we were to try and acquire ten per cent of bowling establishments in the country, this would mean that we would have to invest in them four hundred and forty million dollars. Our net worth is two hundred million dollars. And this includes land and buildings and a lot of other businesses besides bowling. So that in order to have a ten per cent ownership of the bowling establishments in this country we would have to give up all our other businesses and invest everything in that; this we are not about to do.

I might say that these fourteen points that I read to you are now our policies for the operation of our bowling centers. There we will follow.

We think that the bowling business is a good business. We know that a lot of people in years past have run it down. Proprietors felt that they didn't want competitors. We think that this is wrong. We think you ought to tell the world through the BPAA or any other means that comes to hand what a good business you are in, because if you do the value of your investment will rise. More people will come into the business, sure they will; but, that will mean that you are in a growing dynamic business and one that makes money. We think this is important and we have a lot of things coming along to help you in this endeavor.

Now I'm through. I just wanted to tell you, from a corporate standpoint, how we felt about the bowling business. We think it is great. We want to be in it. We want to be leaders in it as we have been in the past; and, we are going to do everything to keep that spot.

— BPAA —

September!
Back
To
Bowling

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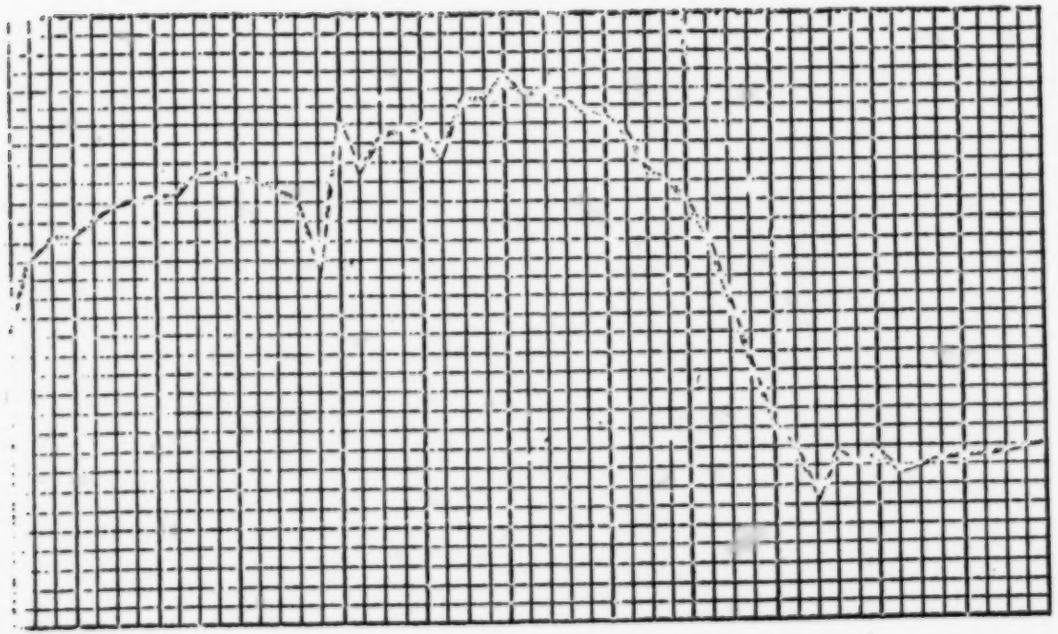
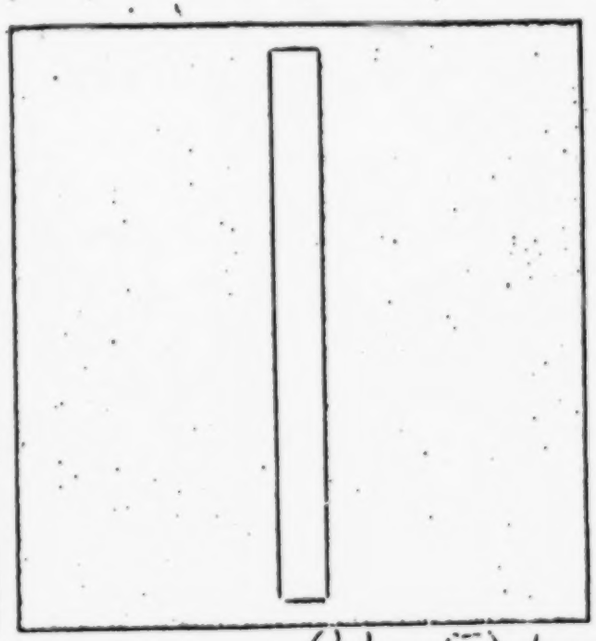
Exhibit P29

the name of the game is:

HOW TO MAKE MONEY





MAHONEY

PL. EX. 121

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Exhibit P29

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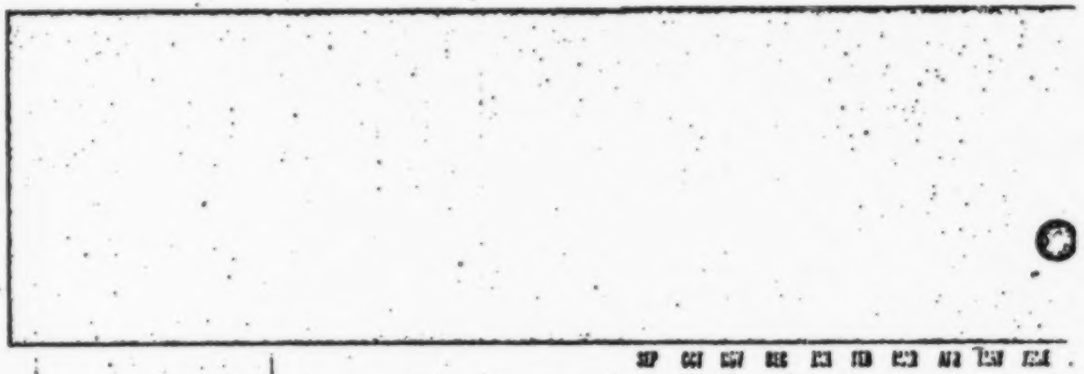

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3

the name of the game is:

HOW TO MAKE MONEY

An outstanding businessman and prominent bowling operator once told us that we would never fully understand this business until we got out there and actually operated a center. Now we are out there and can agree this was a sound observation.

Although Brunswick has been the number one name in the industry for more than 65 years, we had never really participated as an operator until 1965. Now Brunswick is operating bowling centers and through this experience we are gathering a considerable amount of information. Consequently, we can also share your point of view, and have a much better idea of the problems involved and how they may be solved.

Under our management we have learned that most of the centers which we are operating can be profitable. Many of our centers, which were formerly hopelessly delinquent to our credit department, are now self-sustaining. These centers are offered for resale to independent businessmen where equity is available.

Brunswick rehabilitates failing bowling centers by applying three sound business principles:

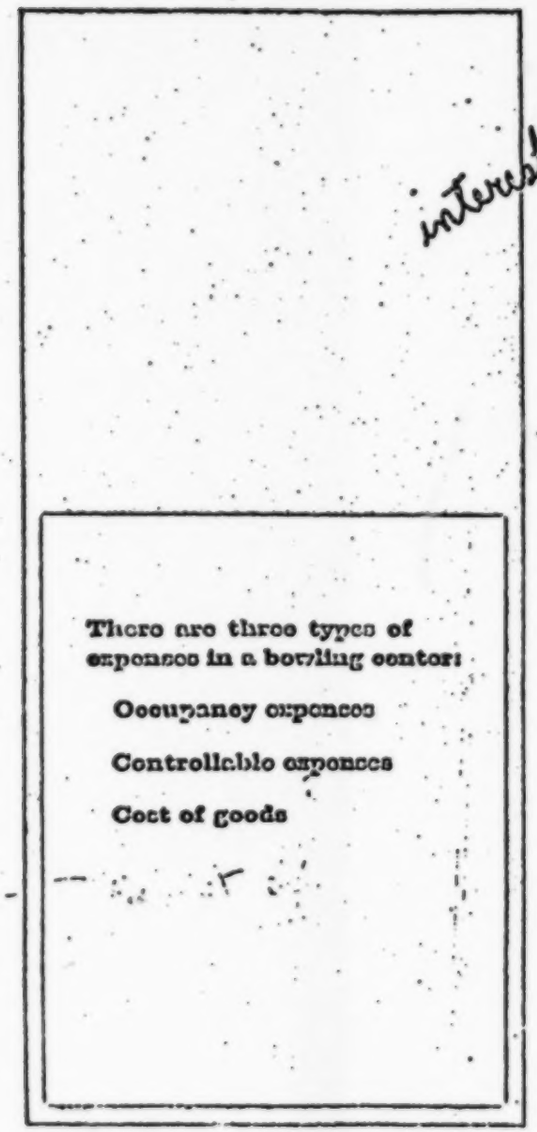
1) Categories of expense should be analyzed and controlled.

2) A fair margin of profit should be included in the price of all products and services.

3) All marketing and promotion efforts should be pre-planned.

In the following pages you will see how we apply these three business principles. All figures and examples are based on our experience in operating bowling centers from coast to coast. We hope this basic information will provide a realistic checklist for comparison with your operation.

First, analyze the entire operation in order to control expenses



OCCUPANCY EXPENSES

Occupancy expenses are "fixed" and include rent or mortgage payments, depreciation, insurance, license fees, and real and personal property taxes. Once committed, management has little or no control over these expenses, which vary according to geographical location.

CONTROLLABLE EXPENSES

Most expenses incurred in the average bowling center, however, are controllable, and are related to volume of business. 80% of these controllable costs are incurred in payroll, maintenance and service, supplies and utilities. Here's how a Brunswick center manager should analyze his operation and control these costs.

Payroll

Total payroll should not average higher than 25% of the total annual revenue, depending on local unions and labor conditions; bar payroll —not higher than 25% of the total bar revenue; and restaurant payroll—not higher than 35% of restaurant revenue.

If payroll costs run higher than these averages, management should ask these questions to know where to reduce costs:

1) How many hours should the center operate?
2) How many people are needed to operate the center?
3) How many jobs are essential?
4) How many people are needed to perform all jobs?

Very often bowling center's personnel are employed for more hours than needed. For example, a restaurant or snack bar may be open during unprofitable slack periods. Hours of operation can frequently be reduced, thus reducing payroll costs.

Payroll costs can also be reduced by early planning of summer hours. The chart on the cover shows that the summer Energy drop-off begins in April, which means summer hours and payroll reduction

should be in effect by May. We decide several months ahead of time what summer business hours will be and how many people are absolutely essential, in order to reduce payrolls at the end of the regular league season.

40% of payroll costs is for maintenance labor (mechanic, pinchaser, lane man and porter). If maintenance labor costs more than 45% of total payroll, we take a close look at jobs performed in order to reduce this cost. Perhaps one man can do several jobs . . . perhaps the maintenance labor force can be reduced during the summer.

Maintenance, Service, and Supplies

A major way to reduce maintenance labor and supply costs is to follow proper preventive maintenance procedures. Our training facilities are available for all proprietors and their mechanics. In addition, we offer manuals on every aspect of maintenance, manuals which provide procedures for proper preventive maintenance with a minimum of labor costs. These recommended procedures are followed in all Brunswick centers.

Most commercial centers buy contracts to service air conditioners, which usually cost $20 to $27 a lane per year. We are training our pinsetter mechanics to maintain air conditioning and heating systems, thus substantially reducing the cost of this service. When properly trained, the pinsetter mechanic frequently is able to increase the efficiency of the air conditioning system, thus reducing electricity costs.

Once this training program is fully developed, we plan to offer an air conditioning workshop to all commercial pinsetter mechanics.

Upon assumption of the operation of a bowling center, Brunswick's policy calls for an overhaul of the physical layout and equipment. Once completed, the following standards, based on the application of our preventive maintenance program, are established for repair, maintenance, supplies and pin costs. These average standards will vary depending on geographical location, lineage and size of the center.

REPAIR AND MAINTENANCE	Per Lane Per Year
Small tools	$ 2.00
Pinsetter parts	30.00
Pinsetter maintenance supplies	6.00
Lane parts	30.00
Lane maintenance supplies*	27.00
Pin maintenance supplies	4.00
Refrigeration equipment**	9.00
Air conditioning & heating**	27.00
Building interior (for interior painting add $6.00 per lane per year)	16.20
Other repair and maintenance	12.00
Vending machine	20.00 (per machine)
Billiard equipment	97.00 (per table)
Signs	100.00 (per sign)
Restaurant equipment (based on an average sized coffee shop with 6 employees and 30 seats—does not include refrigeration equipment)	200.00 (total restaurant)
Bar equipment (based on 2 bartenders & 1 waitress)	150.00 (total bar)
OPERATING SUPPLIES	**Per Lane Per Year**
Bowling supplies	$ 52.20
Lighting supplies	9.00
Janitorial supplies**	19.00
Billiard supplies	15.00 (per table)
Restaurant supplies (based on same size as above)	1,400.00 (total restaurant)
Bar supplies (based on same size as above)	470.00 (total bar)
PIN COSTS	**Per Lane**
Cost per lane with proper maintenance	$0.000

*Includes recoating materials but not resurfacing
**Does not include air-conditioning and service contracts

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We continually look for and develop new products which help reduce maintenance costs. Several new products are the result of studies made in Brunswick centers. Once developed, they are made available to all commercial establishments. Examples are: Brunswick Shield all-purpose urethane coating and Brunswick Super Seal acrylic Floor Finish.

Utilities

Utilities run as high as $33 per lane per month. Brunswick compared utility costs in bowling centers with similar industries and discovered that by modifying or adding electrical equipment, and by consolidating feeder lines, utility costs could be reduced through re-evaluation of a center's electrical classification.

In order to take advantage of this information, each utility company which serves a Brunswick center was asked to make a recommendation for more economical ways to operate the center and to check the center's classification and utility rates.

After electrical equipment was modified as recommended, 20% of all Brunswick centers received rate reductions. The savings amounted to 10% of total utility cost in many of these centers.

A sample of the letter which we sent to local utility companies was submitted to the BPAA., and every member can take advantage of this opportunity to save utility costs.

There are also national consulting firms, available to bowling center management, which provide guidelines for reducing utility costs. Fees are usually based on a percentage of savings realized.

COST OF GOODS

Cost of goods is a cost of products sold. The major products are pro shop, food and beverages. Cost of goods is determined as follows: value of beginning inventory plus purchases, minus value of ending inventory, equals the cost of goods.

The cost of goods is usually measured as a percent of sales for the product. Brunswick centers are budgeted to meet the cost of goods percentages shown at right.

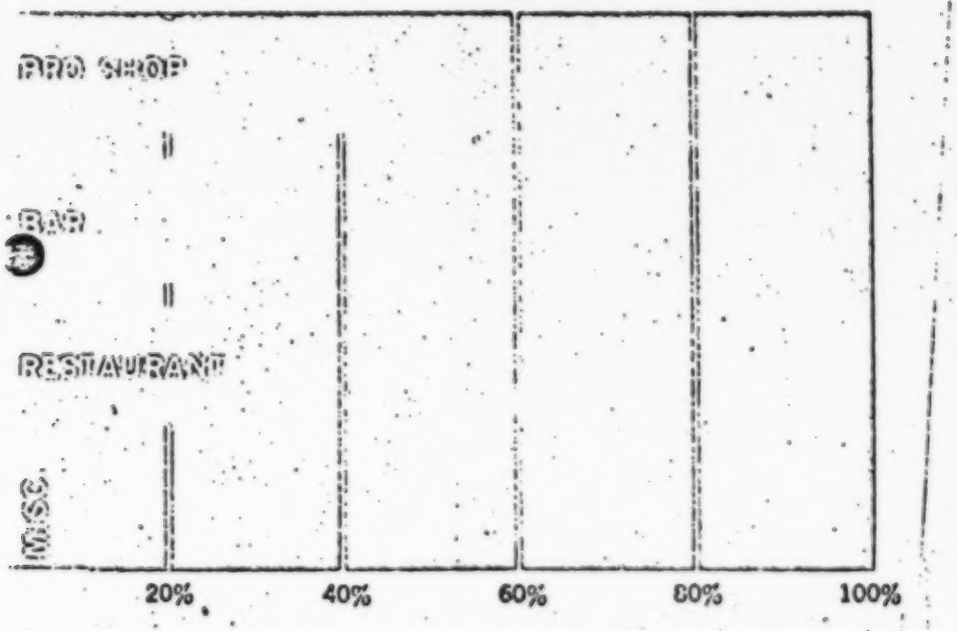
In other words, when we sell a dollar's worth of food, it costs 37¢ for the food product. To determine food cost of goods percentage, divide total cost of goods by total sales of food.

This percent indicates what resale items actually cost and is used as a control factor for day to day operations.

Restaurant and Bar

Cost of goods in restaurant and bar varies according to the type of restaurant operated. Cost of goods should run under 30% for snack bars, under 35% for coffee shops and under 39% for full service restaurants.

Cost of restaurant and bar goods can be effectively reduced through adequate controls, which can turn a losing operation into a profit maker.



Here are several practical control methods used in Brunswick Centers:

1) Put one person in charge. The bowling center manager cannot be expected to run the food and beverage operation.

2) Check inventory against sales periodically.

3) Security is of utmost importance. Be sure all products are properly locked.

4) Remove all slow-moving items from the menu.

5) Provide people preparing food with menu specifications. Include correct portion per serving and specific directions on how to prepare all food.

6) Display menu boards with correct prices on all foods.

7) Use a cash register which separates liquors, draft beer, bottled beer and food.

8) Preprint each bar guest checks with standard menu items and prices. This increases efficiency as well as serving as a cost control.

Pro Shop

In order to control cost of pro shop goods, we maintain tight control on inventory. Brunswick centers carry a very short ball, bag and shoe line of proven fast sellers. For the 1967-68 season, the BCO line with color variations will be 6 balls, 11 bags and 3 shoes.

This short line means:

1) Each center has fewer stock-keeping units, and enables each manager to order each unit in depth.

2) Faster inventory turnover. Each Brunswick center is budgeted for three to four turnovers a year in resale products.

3) Each Brunswick center orders a large quantity of units with each order thus receiving the full dealer discount.

Second, proper pricing makes money

In order to make money there must be a fair margin of profit in the price of the product. This is a sound business principle and applies to bowling as well as any other product.

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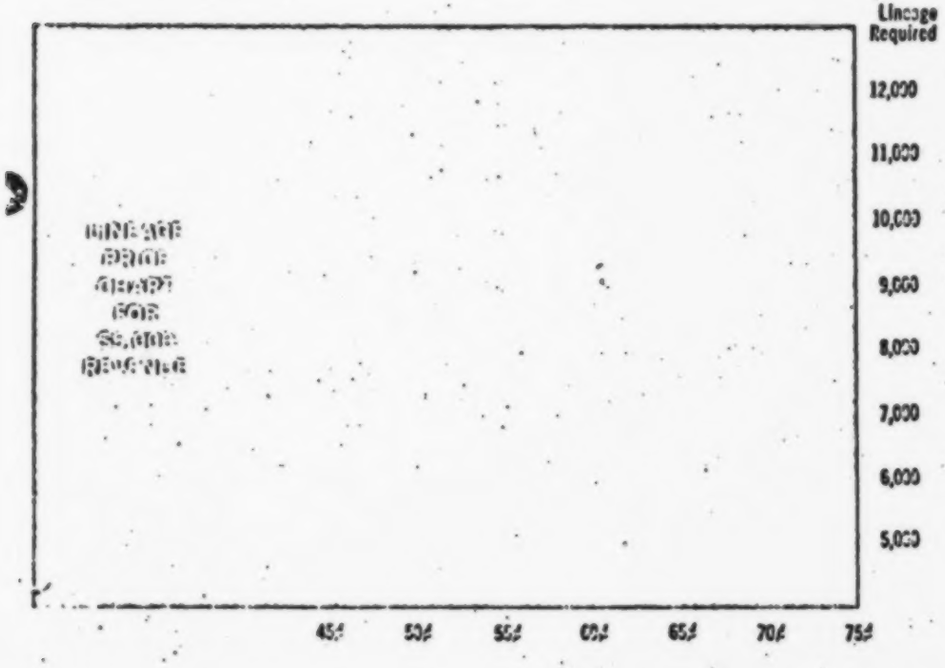
In many of the centers which Brunswick took over, prices had been reduced prior to take over in an attempt to increase lineage. This attempt usually failed. On the other hand, our experience has shown that increasing prices can increase revenue without materially reducing lineage. Local BCO lineage rates are at least comparable to or higher than rates charged by soundly managed centers in the area.

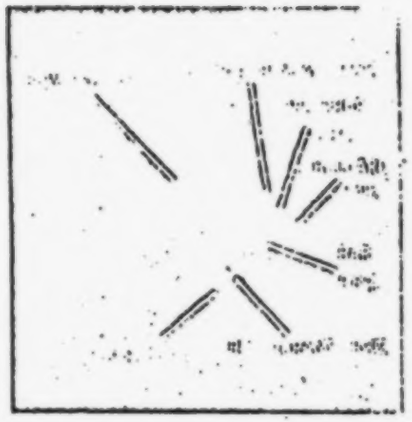
The following chart shows the effect of volume and price changes on revenue. Let's assume we need $5,000 per lane in revenue to pay expenses and make a fair profit. The chart indicates how much volume you must generate at different price points in order to gross $5,000.



Other Sources of Revenue

A bowling center is many types of businesses. The chart at right shows what share of the average BCO revenue dollar is generated by each type of business.

For each dollar of revenue, for example, 9.8c is generated by the restaurant. Cost of restaurant goods should never be lowered by buying inferior quality food products. When a few cents more is paid and higher quality food is served at a fair price, business and profits can be increased. In the pro shop, sell only items which can competitively bear a fair margin of profit.



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A1641
Exhibit P29

Third, increase volume through market planning and promotion

Management should follow three steps to increase volume through market planning and promotion:

Make sure the center is operated properly

Pre-plan the program for a specific market

Follow through on all promotions

PROPER OPERATION

A bowling center must be operated properly before new bowlers are developed, or else new bowlers are lost as fast as they are developed. At the right is our list of items which are continually checked and rechecked to make sure Brunswick centers are in order and properly staffed:

BCO CENTER CHECK LIST

NAME OF LOCATION:

CHECK:

CLEANLINESS AND CONDITION OF
- Parking Lot
- Signs
- Windows
- Lights
- Bowling Pinsetters
- Manager's Office
- Settees & Approach Area
- Lanes, Pin Decks
- Machine Area
- Pinsetters
- Telefonts
- Bar
- Restaurant
- Nursery
- Pro Shop
- Billiards
- Rest Rooms
- Lockers
- Tele-Scores
- Ball Cleaning Machine

COUNTER CONTROL
- Pricing Displayed
- Display Cards Properly Used
- Condition of Rental Shoes
- Approach, Attitude & Dress of Employees (name tags)
- Type of Signs Used
- Promotional Flyers in Evidence
- Use of P.A. Announcements

RESTAURANT AREA
- Security of Food
- Menu Pricing Posted
- Vending Machines—Clean & Full
- Cleanliness of Dishes, Equipment, Fillers, etc.
- Approach, Attitude & Dress of Employees (name tags)
- Check Food & Beverage Costs

BAR AREA
- Quantities Sealed on Bottles
- Security of Liquor and Beer
- Approach, Attitude & Dress of Employees (name tags)

BILLIARD ROOM
- Pricing Displayed
- Physical Condition of Tables, Cues, etc.

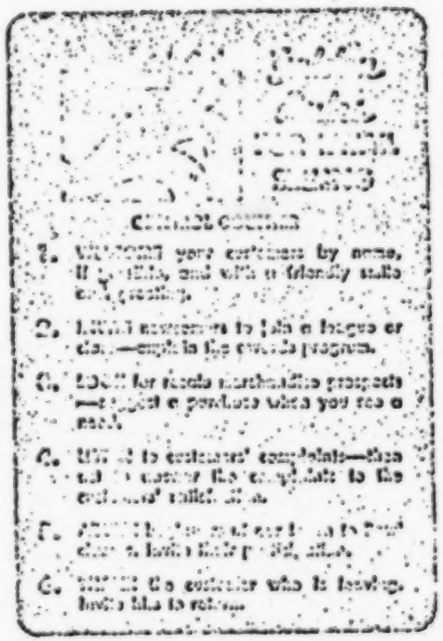
REST ROOMS
- Condition of Toilet Stalls, Urinals, Supplies, Coiling & Floors

PRO SHOP
- Chart, Displays
- Pricing of Merchandise
- Security of Merchandise
- Check Sales Slips

A1642
Exhibit P29

Counter control staff must be properly trained in order to perform all jobs correctly. Below are our Golden Rules for retail selling which are used in training Brunswick Center staff:

MAINTENANCE AREA	Condition of Pots Condition of Pins Condition of Tools Condition of Frenchmaster Seals Condition of Pit Carpet Quantities of Supplies and Parts Maintenance Schedules
MANAGER'S OFFICE	Condition of Desk, Security of Money Status of Market Development Board Measure Progress and Results of Learn to Bowl and League Sales by Reviewing Monthly Promotion Reports Observe Learn to Bowl Classes and Telephone Solicitation Check All Promotional Tools and Materials to See if Being Used Properly Up-to-Date Status of League Schedule Boards, Summer and Winter Status of League Attendance Cards Mailing List File (Birthday Parties, Team Registration Cards) Check All Classes of National Tournament Check Tournament Results Review Present and Planned Promotions Center Security and Safety Hazards Discuss Competitive Situation, Price Structure and Economic Conditions of Area Personnel Problems Review Training Programs, Observe Working Habits
ACCOUNTING	Petty Cash Funds or Date of Last Report Framemaster Reading (Foul Cards) Last Date of Daily Report & Deposit Slip Time Card Rack vs. People Working Proper Use of Cash Registers Audit Score Sheets, Petty Cash, One Day's Bowling Receipts and Deposit Slips Check Lane Users and Lineups and Compare With Cards Check Discrepancy Reports and Several D. J's Cash Reports at Random Review P & L Statement



Counter Control

1. Welcome your customers by name. If possible, and with a friendly smile and greeting.
2. Learn customers to take a league or class—explain the awards program.
3. Look for resale merchandise prospects—suggest products when you see a need.
4. Listen to customers' complaints—then ask questions to explain the complaint to the customer's satisfaction.
5. Attempt to sell one of our items to your customers before they pay bill, check, etc.
6. Thank the customer who is leaving. Invite him to return.

THE GOLDEN RULES OF RETAIL SELLING

The Golden Rules for Retail Selling that apply to your position as an employee of this Brunswick operated bowling center are there applying to everyone dealing with the public in a sales capacity. Work each Golden Rule with one part of your mind, apply it naturally to each customer and you will contribute your share to the success of the center. Keep this card in your wallet. Review it often. Apply the Golden Rules every day.

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MARKET PLANNING

After the center is running properly, the management should have a market plan for new bowlers tailored to the specific area. In Brunswick Centers a plan is updated every four months. The plan includes a goal for a specific number of new bowlers for each center. As a result, an average of 350 people learn to bowl per center each year. More than 63% of these newcomers are converted to league bowlers.

BCO follows the same basic plan provided to commercial proprietors at Brunswick Field Management Seminars. All bowler development is built around Brunswick Learn to Bowl classes. League sales, door-to-door and telephone techniques are all used, depending on the target market areas. League sales are included in all plans because it is the most economical technique and produces groups of bowlers. League sales appointments are made one or two weeks ahead of each call. The prospect is offered bowling as a service with a free bowling party as incentive to the group.

In developing a market plan, management should ask itself, is it worth $4 to $5 per bowler to develop a new league bowler who can generate $120 per year revenue? This cost for new bowlers should include Learn to Bowl instructors, printed materials, door-to-door and telephone sales people, and miscellaneous expenses.

PROMOTION PROGRAMS

All promotional activities in Brunswick Centers are preplanned many months in advance. Before each event, all employees are alerted and trained, so that each person knows what he or she will do during the event. Brunswick Centers will also participate in the National Bowling Council "Bring a Friend" program.

In addition to Market Planning, Brunswick Centers have four basic promotion programs:

Tournament Program

Each Brunswick Center plans and runs a minimum of eight tournaments and special events during the regular bowling season. A sample schedule is shown at right.

Junior Program

Brunswick is helping develop new bowlers for tomorrow by a concentrated program aimed at the junior market today. Each Brunswick Center has a year-round program for junior bowling shown at right.

In addition, our Junior Program includes support and participation in the BPAA All-America Youth Tournament, the use of promotional junior bowling shirts and patches, a birthday party promotion and "Junior Friendship Days" from May through August.

Summer Program

The summer program planning begins in December and is implemented beginning in February in Brunswick Centers. In addition to summer leagues and open play hours, special Learn to Bowl Classes are formed.

Coupon books, which are redeemable for one free game of open play per week during the summer, are given to all qualified winter league bowlers. Our past experience is that approximately 18% of all coupons distributed are redeemed, and more than two additional paid games are bowled for each free game.

This promotion provides an incentive for winter league bowlers to come in and bowl regularly during the summer.

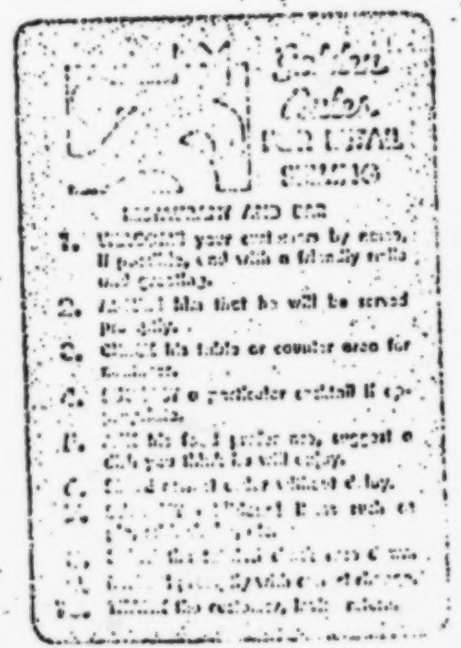
Senior Programs

In 1980 there were 18 million persons in the United States 65 years of age or older. This is a growing market for bowling and a special program has been developed by BCO aimed at senior citizens called "Clubhouse 55". The object of this promotion is to encourage senior men and women—55 years and older—to participate regularly in the healthful sport of bowling and other activities in our bowling centers.

RESTAURANT AND BAR

Our revenue from food and beverage averages 20% of the total revenue nationally, but reaches as high as 50% in some of our bowling centers. The higher revenue potential can be reached if management has proper interest and knowledge, good controls, and promotes the food and beverage operation.

All restaurant and bar personnel should be properly trained on how to approach guests, take orders and serve food and beverages. Below are our Golden Rules for retail selling for restaurant and bar:



We do not expect a bowling manager to run the food and beverage operation. A different person is put in charge of our larger food and beverage operations with a base salary plus bonus. In small snack bars, the food and beverage manager is a working employee with additional responsibility and authority. Women often make the best managers in smaller operations.

It is preferable to find a person who is familiar with restaurant and bar operations as manager. When this is not practical, basic food and beverage knowledge can be obtained from literature offered by the National Restaurant Association. Additional training is available for managers of larger operations at Cornell University and Michigan State.

In bowling centers where food and soft drink revenue averages less than $1,000 a month, we usually install full-line vending service in place of the restaurant or snack bar. This includes coffee, cold drinks, snacks, cigarettes, candy, and in some places, sandwiches. If a proprietor is considering vending, he should shop the area carefully, and base his choice of vendor on price, quality, service and reputation. Vending operations should be carefully controlled by supervising all collections and by keeping a record of monthly sales.

In addition to contracts with national and local vendors, Brunswick is operating its own vending service in several centers on a test basis. Results of this test will be relayed to commercial proprietors.

RESALE PRODUCTS

A bowling center has a built-in market for bowling balls, bags and shoes. This market can be reached through:

1) Proper display and internal promotion—displays of balls, bags and shoes are kept clean, and changed every two or three weeks. Flyers are mailed to all regular bowlers advertising product features.

2) Motivation of personnel—personnel should be trained how to sell and taught product features during regular meetings. Incentive contests are held with merchandise offered as prizes.

3) Proper selection of products—a short line made up of fast-selling items assures faster turnover.

4) Proper pricing—the line should include medium to high-medium priced items. All resale items are priced to realize a fair margin of profit.

BEST COPY AVAILABLE

The name of the game is:

BOWLING

In addition to rehabilitating failing centers and establishing a true value for commercial centers, BCO benefits the bowling industry in five other vital areas:

BEST COPY AVAILABLE

NEW BUSINESS BUILDING TECHNIQUES

The operation of bowling centers provides a way to test and implement new business building management techniques. Since our primary interest is to advance the bowling industry, successful techniques and innovations are being made available to the industry for general use.

Current techniques are included in this report and new techniques will be relayed to you through Brunswick Field Management Seminars, Management Schools, Brunswick Sales Representatives.

MANAGEMENT PERSONNEL TRAINING

It is our policy not to hire management personnel away from active bowling centers, but to recruit and train new people. Through this method we provide the industry with a growing corps of qualified bowling center specialists who manage according to the sound business practices learned in extensive BCO training programs.

To date, 320 managers and assistant managers have graduated from BCO training sessions. Over 85% are completely new to the industry, being former teachers, military men, restaurant men, etc.

NEW PROMOTIONS

BCO also provides a means of developing and testing promotional ideas and programs. Several new programs aimed at the Junior and Senior markets are currently being tested in BCO Centers. Programs which prove successful will be developed and offered to commercial management. In the future, BCO plans to develop and test new programs aimed at the men's market.

NEW PRODUCT TESTING

Brunswick Centers provide a means of field-testing new supply and equipment products. Products are tested for time and cost savings, extra income, and bowler convenience. Products which prove successful in field-test are offered for sale to the bowling industry.

NEW BOWLERS

More than 82,000 newcomers have been trained in BCO Learn to Bowl classes since January 1, 1966. Approximately 53,000 joined regular leagues as a result. This is a significant addition to the bowling population at the grass roots level.

If every bowling center in the country would teach 350 newcomers how to bowl each year, this would mean an increase of three and a half million new bowlers per year. And if every center converted at least 50% of these [illegible] leagues, it would mean 1,750,000 new league bowlers per year.

A1649
Exhibit P29

The Number 1 name in the game is:

BRUNSWICK

Selling bowling equipment, supplies and services to the bowling industry is our business. Here is why Brunswick has been recognized as the number 1 manufacturer of bowling products for almost three quarters of a century:

FULL-TIME PRODUCT RESEARCH AND DEVELOPMENT PROGRAM TO PROVIDE BETTER PRODUCTS

Brunswick has spent millions of dollars in the past decade for the development of new products and products innovations. In 1967 we introduced:

- Jet Back pinsetter conversion that ends "late start" problems at half the cost of full conversion.
- Jet Flow seating that provides new styling, new comfort and new flexibility of arrangement.
- Super Seal acrylic floor finish that lasts longer and won't transfer to lane approaches.
- Shield all purpose urethane coating that cuts maintenance cost and protects your center equipment.
- Resale profit-makers [illegible] Crown Jewel [illegible] tempered finish and the revolutionary Trac-Master ball line.

PROMOTION OF BOWLING TO CONSUMERS

Brunswick allocates over 2 million dollars a year to the promotion of bowling. Included in this budget are:

- Lifetime Sports Foundation—The Foundation is dedicated to teaching at the school level and furthering the sports in which a player may participate for his whole life. In more and more schools, bowling is now a part of the regular physical education curriculum.
- Brunswick contributes to the BPAA for the development of programs to aid proprietors.
- Brunswick co-sponsors, through the Sport of Bowling Council, the BPAA All-America Youth Bowling Program.
- Brunswick has contributed equipment and promotional dollars to the BPAA All-Star Bowling Tournament since 1941. The 1968 Milwaukee tourney will mark the fourth consecutive All-Star held in a Brunswick installation.
- Brunswick contributes to the National Bowling Council for projects that are designed to develop bowling and will help implement the "Bring a Friend" promotion.
- We will install the entire ABC Bowling Tournament in 1968, marking more than 50 Brunswick installations for the ABC.
- Brunswick contributes to the WIBC to further the interest of women in bowling.
- Brunswick co-sponsors, through the Sport of Bowling Council, the 100-Plus Program to attract youngsters to bowling.

MANAGEMENT TRAINING AVAILABLE TO ALL COMMERCIAL PROPRIETORS

Brunswick has pioneered the idea of management training to assist proprietors to operate more profitably. The original Management School was initiated in 1953 and since then we have offered training in many areas.

Management School—Updated this year to teach management techniques more effectively, the management school has trained almost 6,000 proprietors and managers in 118 schools.

Counter Control Clinics—Designed to instruct counter personnel in how to perform more effectively and more profitably.

Certified Instructor Clinics—A two day traveling school designed to instruct teachers in how to properly teach bowling and how to instill the league spirit that converts more beginners into league bowlers. This, of course, means more bowling and more profit for the centers.

Equipment Maintenance Clinics—To teach maintenance personnel how to increase operating efficiency and reduce down time.

Field Management Seminars—Specifically designed to teach market planning, including the newest techniques and best methods of bowling center operation, so that proprietors will be able to get the most profit out of their operations.

Lane Maintenance Clinics—Developed this year to teach all facets of tournament lane maintenance to achieve uniform lane conditions for maximum scoreability.

IN CONCLUSION

The information in this brochure was provided to give you, the independent bowling businessman, a checklist for comparison with your operation. Hard work and constant development are required to make money in the bowling business. Our policies and practices, as detailed in this brochure, are geared to the same objective—to build the bowling industry with us for you.

A1651
Exhibit P29

Pending Petition/RIVA COMPETITION • NEW YORK, NEW YORK • JUNE 13, 1977

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A DISCUSSION OF BRUNSWICK CORPORATION

by

John L. Hanigan, President and Chief Executive Officer

before the

New York Society of Security Analysts

Pl. Ex. 1241

FOR RELEASE AFTER 2:00 P.M. (E.D.T.)

FRIDAY, JUNE 6, 1969

New York City

June 6, 1969

A1652
Exhibit P30

Thank you for this opportunity to meet with you and discuss my favorite subject --- BRUNSWICK.

I'm going to make the assumption, which I hope is a good one, that you've all looked over the published data on our company, but in any case, it's in the kit that you will get on your way out.

To put the recent past in perspective, I think it might be useful to say, however, that in 1961 sales of the bowling pinsetter were $200 million and accounted for practically all profits; and since 1963, they have been about $4 million per year and have generated losses.

So, we have had our own private depression in the business which generated the earnings to make our acquisitions.

Since 1963, we have been getting along with no bowling earnings.

I'd like to emphasize three additional points before we leave the past, because they are important in understanding our future.

1. We have reduced debt by over $200 million since it peaked in 1962.

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2. During our time of troubles we spent over $100 million on new plants and equipment so that we are in good shape to take advantage of opportunities.

3. During our time of troubles we spent over $70 million on research, development and engineering, so that we have emerging new products and new materials that <u>are</u> these opportunities.

What's new and what's in the future?

We have now three significant earnings bases --- Kiekhaefer/Mercury, Health & Science, and our Technical Products Division.

Mercury hasn't been able to keep up with demand in the marine propulsion field for the last three years, in spite of large additions to plants. Part of this is because the field is growing so rapidly, but part of it is better market penetration. Our entry into the snow machine field has been slowed because of our responsibility to our marine customers. In the next two years we should have in place the last pieces of our five-year expansion plan,

at which time we should be able to balance things out and take a real look at how much the market can absorb and how much of it we can get.

In this division we have two competitive edges. First, a good distribution and service organization, and second, an engineering competence second to none. With these we should be able to continue to prosper.

The Health & Science Division consists of our 85%-owned subsidiary, Sherwood Medical Industries Inc., and the A. S. Aloe distribution system. Aloe, one of only four national hospital supply organizations, made it possible for us to grow the pieces that make up Sherwood very rapidly. We think it can do the same for other small businesses with good ideas or products in this field, so we are looking for such acquisitions. We think we can bring more than just money to such marriages.

On the Sherwood side of this division, we are spending quite a lot of R & D money, and are continually developing new products and processes. The good margins generated in this organization are the result of not only new products but also are the result of a competitive edge we have in process and mechanical engineering that helps us operate at low cost.

A1655
Exhibit P30

In the recreation capital goods field, we have two significant new products. First, a bowling scorer, which is essentially a fairly sophisticated computer, is being installed commercially for the first time this year, and we believe it will make a significant contribution both to the game and our profits in future years.

Second, a very sophisticated golf game, also a computer, that will be market tested here in Queens and in Tokyo next winter. We think this may be a significant item on its own. We have also found in our first market test in Lombard, Illinois, that it changes a bowling alley into a recreation center and more and different people will use the center. We don't know what the future holds for this product and concept, but it looks hopeful.

An additional fourth earnings base may be developing here.

Both of these devices were designed and are being manufactured in our Muskegon, Michigan, plant.

Pl. 124 (illegible)

In the recreation field, we have also been operating 170 bowling houses that we have had to repossess. Up until now, these have contributed

A1656
Exhibit P30

significant cash flow but book losses. This year they will be in the black. We've learned a lot about operating cash businesses, and think that our techniques can be applied to other fields in the future. We've found the bowling business at retail is a good business, and I'm happy to say that this part of our operations, which was necessary as salvage, looks to be profitable for the future whether we operate them or sell them as going businesses.

In our Consumer Division, which includes our brand names --- Zebco, MacGregor and also Brunswick billiard tables --- we have had spotty results. In Zebco, we have done very well, but in some of the other areas, not so well. We have recently put all of our sporting goods together, and by doing as well over all as we have in some areas, a meaningful improvement will be made.

The School Furniture business is not a large part of the overall, but it does contribute to profit modestly. It is very competitive and I don't look for much in the way of additional growth here.

Owens Yacht has not been in satisfactory shape for some time,

but it appears to have successfully changed its reputation, and now has a new problem . . . how to make enough. This division, while small, has been a minus that should turn plus by next year.

The Technical Products Division is one that most people don't connect with Brunswick. It has two distinct sectors - Defense, which is profitable; and Metal Fibers, which is not, but is much more interesting.

In the Defense business, we are operating in two distinct fields - strategic and tactical. In the strategic field, we make sophisticated radomes for such airplanes as the Phantom, F111, and C5A, as well as Polaris missile cases. We have excellent technical competence in these operations and expect to continue to get a share of this business.

On the tactical side, we are a large supplier of pyrotechnics and tear gas grenades, which may lead to a civilian market . . . how large a one we don't know yet.

The most interesting part of the Technical Products Division to me, however, is the metal fibers business . . . a possible fifth earnings base.

This is an area where Brunswick R & D has literally created a family of new materials by inventing ways of making metal fibers very small. We have made them down to 1/2 a micron in diameter. (A micron is 1/25th of a .001 of an inch.)

This gives us a very versatile group of metals that have new properties. Commercially we are now blending them with carpet yarns to eliminate static. They make corrosion resistant and high temperature filters that are specified on many aircraft and submarines.

At the present we are working hard with aircraft manufacturers to quiet jet engines to meet new FAA specifications with these materials.

They appear to have the edge in the making of abradable shrouds to give a boost to jet engine efficiency.

Suffice it to say that new possible uses for these materials appear every day, and I am confident our investment in this new field of technology will pay off handsomely - some day. I don't know when.

In addition, of course, we are doing all the other things that a modern company does, such as making sure we exploit overseas markets; making sure we make maximum use of EDP, both for problem-solving and engineering; and doing all the planning, accounting, motivating, etc., etc., that everyone else does. We hope we're doing them better.

The thing that makes us different, I think, in addition to the marketing edge that many people know we have, is that we have a competitive edge we didn't used to have in the good technical competence of many of our divisions. I don't think many people think of us that way. I happen to think its our strongest point.

Thank you.

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A1661
Exhibit P32

BCOD CONSOLIDATED SUMMARIES
DOMESTIC OPERATIONS ONLY

	1965	1966	1967	1968	1969	1970	1971	1972	TOTAL
Number of Centers	124	149	162	164	163	167	167	167	
Number of Lanes	3,629	4,521	4,988	5,076	5,015	5,144	5,178	5,200	
Number of Ten-Pin Lanes	3,519	4,411	4,878	4,988	4,825	5,054	5,088	5,110	
Profit/ (Loss)	$(2,171,000)	$(1,136,000)	$(1,205,000)	$ (751,000)	$ 357,000	$2,310,000	$4,877,000	$6,296,000	$ 8,577,000
Depreciation	$ 879,000	$ 2,122,000	$ 2,544,000	$ 2,660,000	$ 2,570,000	$2,279,000	$2,065,000	$2,175,000	$17,294,000
Cash Flow	$(2,681,000)	$ 986,000	$ 1,339,000	$ 1,898,000	$ 2,804,000	$4,469,000	$6,649,000	$8,038,000	$23,502,000

PLAINTIFF'S EXHIBIT

3/30/73

Mr. Dan Lieblich
National Bowl-O-Mat, Inc.

Mr. K. F. Woelfer

October 21, 1964

J. G. Thomas

Mr. John A. Soufort

Dan Lieblich was in Home Office the other day and discussed with me the possibility of removing some of his equipment from a Florida location to the White location on Roosevelt Boulevard that I understand has been closed. Apparently Mr. Lieblich has a contact with the people who control the building and real estate and can make a very good deal.

I called Al Mueller right away and got a fast check on what the location and area look like. I called Mr. Lieblich and told him that in my opinion it was marginal but that it would probably bear further investigation on his part, especially if he could get a good lease.

Please prepare a regular area survey for this location - Mr. Lieblich is going to come to Philadelphia the week of November 2nd and you should try to contact him to set up a date to meet him in Philadelphia and show him this location and the area and discuss the survey.

Mr. Lieblich's chain, National Bowl-O-Mat, Inc., is one of the best we have and his credit is excellent; if we can help him solve this difficult problem in Florida, we should do so.

I'd appreciate it Ken, if you would handle this personally, and if you have any questions please give me a call. Please get in touch with Mr. Lieblich in advance of his visit - following is information on him:

Mr. Daniel Parke Lieblich
President
National Bowl-O-Mat, Inc.
152 Market Street
Paterson, New Jersey

Phone - ARmory 8 - 0500

Dr. Marco

Amf

P-33

J. G. Thomas

BEST COPY AVAILABLE

BOWLING DIVISION

Brunswick CORPORATION

PLAINTIFF'S EXHIBIT

3/30/73

August 27, 1965

Mr. Daniel P. Lieblich
National Bowl-O-Mat Corporation
152 Market Street
Paterson, New Jersey

Dear Dan:

It appears that the "fickle finger of fate" is keeping our paths from crossing. As you know, I have been away from the office constantly since the first part of August and my travels have not taken me into an area where I would have an opportunity to meet with you and discuss - it appears - the many problems that seem to have arisen. I want you to be assured that corrective action has been instituted. Whether you believe it or not, National Bowl-O-Mat Corporation is a very valued customer of the Brunswick Corporation, and we here at the home office are quite concerned when aggravations arise that cause you to be unhappy.

I also want to personally thank you for the nice comments you made about me in your correspondence to Mr. Jim Urbanek. It is not often that a salesman is fortunate enough to have a customer who will take the time to compliment a member of a corporate sales organization.

Mr. Larry Parker, Chicago-South Branch Manager, has dispatched a service representative to Indianapolis to inspect the complaints concerning resurfacing. The Manager, Mr. Russell, was informed that the warranty on the lanes resurfaced by an independent contractor is no longer in effect. The Brunswick warranty on their lanes definitely states that the 5-year warranty for replacing patches is only in effect if Brunswick trained mechanics do the resurfacing on these lanes during that period.

The warranty is in effect on the eight new lanes installed last summer and if patches are necessary on those lanes, it will be done on a no-cost basis. If patching and repair work are required on the other lanes, then it will have to be done on a time and materials basis.

There have been hours of conversation and reams of correspondence trying to get at the bottom of the pin adjustment for Pueblo Bowl-O-Mat. After receiving your letter of August 4, Mr. Tindle, Kansas City Branch Manager, has met with Mr. Callahan and discussed this subject thoroughly. Mr. Callahan emphatically states that he never made any commitment to a 25 set pin adjustment, either as a salesman now or when he was the Denver Branch Manager. The former salesmen in that territory, Mr. Beiderbecke and Mr. Christopherson have been contacted and both of them stated that they have never discussed the 25 set pin adjustment with Mr. Kinney or anyone else at Bowl-O-Mat.

Since this situation seems to be at an impasse, I recommend that we both agree to a seven set pin adjustment and close the file on this irritating case.

Due to the tremendous backlog of orders at our Muskegon factory, and because there are no experienced personnel that can be hired on a part time basis to assist in removing this "log jam", the special color masking units for Saginaw Bowl-O-Mat will be shipped on September 1, 1965. You could tie me to the "whipping post and give me forty lashes with a cat-o-nine-tails" and not hurt me any more than I am hurt because of the delays we have experienced in getting these masking units shipped and installed at Saginaw.

I will do everything in my power to make these past problems only

A1664
Exhibit P34

seem like a bad dream and will devote all energies to making our future relationship more pleasant for National Bowl-O-Mat and Brunswick Corporation.

Most sincerely,

BRUNSWICK CORPORATION

Bill

William J. Blanks
National Accounts Manager

WJB:o'r

A1665
Exhibit P34

SUBJECT

TO: H. T. Chadwick

FROM: J. G. Thomas

DATE: September 13, 1966

COPIES TO:
J. F. Urbanek
J. A. Barron
M. J. Birnbauer
R. G. Reed
J. A. Seaford
L. A. Parker

PLAINTIFF'S EXHIBIT P-35 C. 595-66 3/22/73

This will confirm our phone conversation of Monday, September 12, in which I instructed you to inform Fair Lanes, Inc. of Baltimore and National Bowl-O-Mat of Paterson, New Jersey that all purchases, effective Wednesday, September 14, by these corporations from Brunswick for supplies, equipment, service, etc., must be on a cash or c.o.d. basis.

By return mail, please tell me whom you informed at Fair Lanes and National Bowl-O-Mat of this new policy.

J. G. Thomas

JGT:ca

A1666 Exhibit P35

September 13, 1966

MEMO: Daniel Parke Lieblich

RE: Brunswick Corporation Payment Policy

At 3:15 this afternoon Mr. Henry Chadwick, Eastern Regional Vice-President of Brunswick Corporation, successor to John Fitzsimmons, called me and introduced himself. He has informed me that upon his instructions of Jack Thomas, Vice-President of Marketing, Bowling Groups Division of Brunswick Corporation, he was to inform us that effective this date all of our subsidiary companies of National Bowl-O-Mat Corporation must pay either cash or COD for any and all merchandise ordered. I began questioning him in a general way "why" and he said he didn't know but that he was only following the instructions of his boss, Jack Thomas.

Arnold E. Taras

ddf

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EXH. NO. P-5 WIT. DATE 1-23-74 BY FED. COURT REPORTERS

A1667 Exhibit P36

September 14, 1966

Mr. J. L. Hanigan, President
Brunswick Corporation
69 West Washington Street
Chicago, Illinois

Dear Mr. Hanigan:

Yesterday, Mr. Henry Chadwick, your Eastern Regional Vice President, called our office to say that per the instructions of Mr. Jack Thomas, Vice President of your Bowling Division, all of our subsidiary companies must pay for all merchandise received from your company as and when delivery of such merchandise is received.

As you know, our subsidiary companies are located in seven states and all financial matters are handled from Paterson. Over the many years that our operating subsidiaries have purchased Brunswick equipment and supplies all checks (approximately $7,000,000 worth) have been processed from Paterson. As your Bowling Division knows our subsidiaries do not have available in their field locations the means of paying for merchandise as and when delivered.

This action by your Bowling Division coming as it does immediately upon the filing of your counterclaim to the anti trust law suit we have filed against your company would appear to be further indication of your desire and intention to harass our company and to discriminate against it. Surely your action cannot be the result of the credit standing of our operating subsidiaries each of which has prepaid in full any equipment debt or other obligation due you. As a matter of fact, each Brunswick invoice is processed with priority at our Home Office so that payment discounts can be taken by our subsidiaries when indicated on your invoices.

Tr 617

Since the filing of our complaint in June, our subsidiaries have continued to purchase machine parts and supplies from your company and I know of no instance where there has been any unreasonable delay in the payment of any invoice by any one of our subsidiaries.

I shall appreciate it if you will review this situation and advise me if this new payment procedure will be your desired practice.

Very truly yours,

Daniel Parke Lieblich, President

DPL/em

RETURN RECEIPT REQUESTED

PL. EX 232 id

EXH. NO. P-5
WIT.
DATE 11-29
BY
FED. COURT REPORTERS

A1668
Exhibit P37

April 9, 1965

Mr. Milton Rudo, Vice President
Brunswick Corporation
623 South Wabash Avenue
Chicago 5, Illinois

Dear Milt:

Now that I understand that the bankruptcy sale of AIBC has been completed and that Brunswick is operating all of the various locations, I shall have to put in writing my desire to negotiate with you the acquisition of Fairlawn Lanes. It is possible that one or two AIBC centers that are in areas where we now have operating centers might be of interest to us. I know we have discussed this informally on a few occasions in prior months.

No doubt you have many initial problems of organizational structure confronting you at this moment, but when you do have the time to devote to it, please let me hear from you about Fairlawn and the possibility of one or two others.

Sincerely,

Daniel Parke Lieblich
President

DPL:jvm

PL. EX. 239 id

BEST COPY AVAILABLE

EXH. NO. P-4E
WIT.
DATE
BY
FED. COURT REPORTERS

A1669
Exhibit P38

I regret that you construe our policy as some sort of harassment by Brunswick. On the contrary, it seems to us simply that by minimizing the business contacts with your firm (by placing sales on a cash basis) Brunswick avoids the harassment and burden of attempting to do business with National on a credit basis.

Yours truly,

James F. Urbanek
President, Bowling Division

JFU:mh

A1670
Exhibit P38

Page 2
Mr. Daniel Parke Lieblich

September 23, 1966

I regret that you construe our policy as some sort of harassment by Brunswick. On the contrary, it seems to us simply that by minimizing the business contacts with your firm (by placing sales on a cash basis) Brunswick avoids the harassment and burden of attempting to do business with National on a credit basis.

Yours truly,

James F. Urbanek
President, Bowling Division

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JFU:mh

A1671
Exhibit P39

Brunswick CORPORATION
EXECUTIVE OFFICES

April 19, 1965

Mr. Daniel Parke Lieblich
President
National Bowl-O-Mat Corporation
152 Market Street
Paterson, New Jersey

Dear Dan:

I received your letter of April 9 concerning your interest in the Fairlawn Bowling Center.

As I informed you when you and I talked, we will be selling these bowling establishments as businesses and not as numbers of lanes or equipment. Our policy upon taking over bowling establishments is to operate them for three to six months before we set a price. However, if you have a concrete offer that you want to make on downpayment, price and terms we will be glad to consider it.

Recently one of our people was told that you, Fair Lanes and Mr. Olshan of New York had pooled together a considerable sum of money and had bid for many of the AIBC houses. I was a little surprised to hear this, Dan, in light of the telephone conversation you and I had, but I am sure there were good reasons for you to take this position.

If there is anything else I can do for you along these lines, please do not hesitate to write to me.

Sincerely,

Milton Rudo

MR:EOC

623 SOUTH WABASH AVENUE / CHICAGO 5, ILLINOIS, U.S.A. / WEBSTER 9-3000

A1672
Exhibit P40

April 23, 1965

Mr. Milton RUdo, Vice President
Brunswick Corporation
623 South Wabash Avenue
Chicago, Illinois

Dear Milt:

Thank you for your letter of April 19th about Fairlawn.

We would be pleased to discuss the purchase of the center, now, if we could examine the operating figures for the last few years. If these could be made available to me, and if I could then speak with Bernie or anyone else who might be familiar with the Fairlawn operation, we could put this thing in a position to consummate in the next few months. Consequently, I will await further word from you or someone else in the operating company.

With respect to the third paragraph in your letter, all that I can say is that your informant was incorrect. If any further elabboration is required, all you have to do is call me.

Sincerely,

Daniel Parke Lieblich
President

DPL:jvm

A1673
Exhibit P41

BEST COPY AVAILABLE

Ax 42

BOWLING CENTER OPERATIONS DIVISION
M. RUDO
PRESIDENT

Brunswick CORPORATION

May 13, 1965

Farlow

Mr. Daniel Parke Lieblich
President
National Bowl-O-Mat Corporation
152 Market Street
Paterson, New Jersey

Dear Dan:

I received your letter of April 23 and have discussed this with our people who have been involved in the AIBC situation.

Right now, Dan, all of the facts and administrative details of taking this over have not been completed and I really am not in a position to quote prices or discuss these places at this time. It looks like it could be another two to three months before this situation is wrapped up into a neat package.

I would say this to you--that any place we have, in time, is available for sale, but we will require 25 to 30% down payment, which we think is reasonable. We have to see what our costs are and what the volumes, profits and cash flows are. When this is available, we will be glad to talk to you further.

Hope you are well.

Sincerely,

Milt

Milton Rudo

MR:EOC

PL. EX. 242 id

p.5

DATE 1/-
BY
FED. COURT REPORTERS

69 WEST WASHINGTON STREET / CHICAGO, ILLINOIS 60602, U.S.A. / 312-341-7010

A1674
Exhibit P42

A1675
Exhibit P44

OX 44

11 LARGEST INDEPENDENT PUBLIC CORPORATIONS OPERATING BOWLING CENTERS COMPARED WITH BRUNSWICK

YEAR	NET WORTH			GROSS REVENUE			NUMBER OF CENTERS			YEAR
	BRUNSWICK	NBO INDUS.	10 OTHERS	BRUNSWICK	NBO INDUS.	10 OTHERS	BRUNS.*	NBO	10	
1965	131,581,000	2,473,000	13,448,000	335,073,000	3,276,000	43,612,000	136	11	172	1965
1966	135,421,000	2,576,000	12,090,000	344,648,000	3,240,000	45,131,000	193	10	170	1966
1967	142,852,000	2,671,000	11,685,000	393,457,000	3,272,000	48,670,000	200	10	169	1967
1968	170,469,000	2,746,000	13,172,000	434,096,000	3,261,000	49,461,000	189	10	157	1968

PL. EX. 58 id.
(last sheet)

* Includes the Following Total of Canadian Centers:
1965 - 10
1966 - 17
1967 - 16
1968 - 13

A1676
Exhibit P45

PX 45

	AMERICAN BOWLING ENTERPRISES	AMERICAN RECREATION CENTERS	BOWLING CORPORATION OF AMERICA	BOWL AMERICA INC.	CONSOLIDATED BOWLING CORPORATION	FAIR LANES INC.	GENERAL BOWLING CORP.	GREAT LAKES RECREATION	MAJOR LEAGUE BOWLING & RECREATION	NEO INDUSTRIES	UNITED BOWLING CENTERS	TOTAL 11 COMPANIES	BRUNSWICK
YEAR ENDING	6/27/65	5/26/65	8/31/65	6/30/65	6/30/65	6/30/65	9/30/65	5/31/65	6/30/65	8/31/65	6/30/65		12/31/65
NUMBER OF CENTERS	15	10	14	14	34	37	8	11	21	11	8	183	136
NET PLANT + EQUIPMENT	2,125,180	5,556,350	9,011,616	2,188,575	24,495,069	8,519,163	2,546,326	9,611,131	3,903,728	4,706,258	1,047,150	73,710,546	76,158,000
NET WORTH (DEFICIT)	(1,965,989)	1,363,499	3,201,421	582,705	5,017,019	2,578,722	170,691	1,713,568	615,985	2,473,487	170,345	15,921,453	131,581,000
GROSS REVENUES	2,755,051	5,681,297	6,280,763	3,754,759	8,111,982	6,870,388	2,198,908	3,680,531	2,841,978	3,276,000	1,436,247	46,557,904	335,073,000
PRE-TAX PROFIT (LOSS)	(514,801)	17,236	596	102,427	(83,682)	251,417	(93,818)	24,752	(236,999)	29,000	(273,024)	(770,946)	4,078,000
												WRITE-DOWN	132,660,000
												(LOSS)	(128,582,000)
YEAR ENDING	6/26/66	5/25/66	8/31/66	7/3/66	6/30/66	6/30/66	9/30/66	5/31/66	6/30/66	8/31/66	6/30/66		12/31/66
NUMBER OF CENTERS	15	11	14	14	34	34	8	11	21	10	8	180	193
NET PLANT + EQUIPMENT	2,017,434	5,224,917	8,698,285	1,876,488	20,228,172	6,817,154	2,361,750	9,429,380	3,530,782	4,723,347	1,843,252	66,750,957	77,416,000
NET WORTH (DEFICIT)	(2,331,618)	1,377,282	3,043,215	702,452	4,062,000	2,758,703	168,516	1,889,792	173,932	2,576,103	246,155	14,666,532	135,421,000
GROSS REVENUES	2,823,270	5,650,832	6,524,150	3,975,466	9,242,720	6,640,406	2,327,871	3,826,867	2,715,552	3,240,000	1,403,470	48,370,604	349,698,000
PRE-TAX PROFIT (LOSS)	(300,556)	20,283	(141,805)	127,705	(472,102)	312,029	(2,175)	183,050	(442,053)	106,000	(110,820)	(720,444)	5,729,000

P1 EX. 58 id

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A1677
Exhibit P45

	American Bowling Enterprises	American Recreation Centers	Bowling Corporation of America	Bowl America Inc.	Consolidated Bowling Corporation	Fair Lanes Inc.	General Bowling Corp	Great Lakes Recreation	Major League Bowling & Recreation	NBO Industries	United Bowling Centers	Total 11 Companies	Brunswick
Year Ending	6/25/67	5/31/67	8/31/67	7/2/67	6/30/67	6/30/67	9/30/67	5/31/67	6/30/67	8/31/67	6/30/67		12/31/67
Number of Centers	14	12	14	14	34	33	8	11	21	10	8	179	200
Net Plant & Equipment	1,792,961	4,839,378	7,796,236	1,818,638	17,855,502	7,640,[illegible]1	2,313,434	8,986,157	3,205,870	4,401,012	2,018,639	62,668,018	76,447,000
Net Worth (Deficit)	(2,654,748)	1,430,280	2,509,541	873,545	3,814,088	2,914,040	172,928	2,081,803	415,547	2,670,885	127,490	14,355,399	142,852,00[illegible]
Gross Revenues	2,994,422	6,460,118	6,513,909	4,132,354	9,545,022	8,279,100	2,476,273	4,019,054	2,825,385	3,272,000	1,424,697	51,942,334	393,457,00[illegible]
Pre-Tax Profit (Loss)	(230,161)	92,998	(633,764)	183,609	(197,228)	387,255	4,412	338,014	(161,024)	103,000	(118,665)	(231,554)	11,266,[illegible]
Year Ending	6/30/68	5/29/68	8/31/68	6/30/68	6/30/68	6/30/68	9/30/68	5/31/68	6/30/68	8/31/68	6/30/68		12/31/68
Number of Centers	10	12	8	14	34	32	8	11	21	10	7	167	189
Net Plant & Equipment	1,805,000	4,495,514	5,245,208	1,753,366	13,913,185	7,252,345	2,136,063	8,919,806	2,944,597	4,191,487	1,807,754	54,464,225	78,694,000
Net Worth (Deficit)	(1,983,603)	1,474,547	2,412,530	1,097,812	3,727,744	3,325,459	195,123	2,420,870	485,883	2,745,807	15,677	15,917,849	170,469,0[illegible]
Gross Revenues	2,950,088	6,979,411	5,177,622	4,473,101	8,801,666	9,613,775	2,728,245	4,026,967	3,444,875	3,261,000	1,265,697	52,722,497	434,896,0[illegible]
Pre-Tax Profit (Loss)	(68,698)	102,657	(96,921)	327,148	19,462	657,062	32,195	420,597	70,336	125,000	(38,234)	1,550,604	24,206,[illegible]

	No of Centers	Net Plant & Equipment	Net Worth (Deficit)	Gross Revenues	Pre-Tax Profits (Loss)
American Bowling Enterprises, Inc.	(Includes Billiard Supply Subsidiary)				
6/27/65	15	2,125,190	(1,968,994)	2,255,051	(514,801)
6/26/66	15	2,017,434	(2,331,618)	2,823,270	(300,566)
6/25/67	14	1,792,961	(2,654,748)	2,994,422	(230,161)
6/30/68	10	1,805,000	(1,983,603)	2,950,088	(67,648)
American Recreation Centers, Inc					
5/26/65	10	5,556,350	1,363,499	5,681,297	17,236
5/25/66	11	5,224,918	1,377,282	5,650,832	20,283
5/31/67	12	4,839,378	1,430,280	6,460,118	92,998
5/29/68	12	4,495,514	1,474,547	6,979,411	102,657
5/28/69	12	4,331,897	1,513,650	6,432,261	126,251
Bowling Corporation of America	(Now Charan Industries (Includes Amusement Parks) & Real Estate				
8/31/65	14	9,011,616	3,201,421	6,280,763	596
8/31/66	14	8,693,285	3,043,215	6,524,150	(141,805)
8/31/67	14	7,796,236	2,509,451	6,513,909	(633,764)
8/31/68	8	5,245,208	2,412,530	5,177,622	(96,921)
8/31/69	10	14,009,741	4,650,557	6,033,615	527,393

	No. of Centers	Net Plant & Equipment	Net Worth	Gross Revenues	Pre-Tax Profits (Loss)
Bowl America Inc.					
6/30/65	14	2,188,575	582,705	3,254,739	102,427
7/3/66	14	1,876,484	702,452	3,975,466	127,705
7/2/67	14	1,818,638	823,545	4,132,354	183,609
6/30/68	14	1,753,366	1,097,812	4,473,101	322,148
6/29/69	14	1,651,998	1,182,214	4,794,205	409,349
Consolidated Bowling Corporation	(Includes Real Estate)				
6/30/65	34	24,495,069	5,017,019	8,111,982	(83,692)
6/30/66	34	20,228,172	4,062,000	9,242,720	(472,102)
6/30/67	34	17,855,502	3,814,088	9,545,022	(193,228)
6/30/68	34	13,913,185	3,722,344	8,801,666	19,462
Fair Lanes, Inc.	(Includes Arundel Ice Casa)				
6/30/65	37	8,519,163	2,518,722	6,470,398	257,417
6/30/66	34	6,817,154	2,758,703	6,640,406	312,029
6/30/67	33	7,640,191	2,914,040	8,279,100	337,255
6/30/68	32	7,252,248	3,325,459	9,613,735	652,062

	NO. OF CENTERS	NET PLANT & EQUIPMENT	NET WORTH	GROSS REVENUES	PRE-TAX PROFITS (LOSS)
GENERAL BOWLING CORP					
9/30/65	8	2,546,326	170,691	2,198,908	(93,818)
9/30/66	8	2,361,750	168,516	2,322,871	(2,125)
9/30/67	8	2,313,434	172,928	2,476,273	4,412
9/30/68	8	2,136,063	195,123	2,228,295	32,195
5/30/69					
GREAT LAKES RECREATION CO (INCLUDES MOTELS)					
5/31/65	11	9,611,131	1,713,569	3,680,531	24,252
5/31/66	11	9,429,380	1,889,792	3,826,867	183,050
5/31/67	11	8,986 157	2,081,883	4,019,054	338,014
5/31/68	11	8,919,706	2,420,870	4,026,967	420,593
5/31/69	11	8,537,591	2,506,857	4,075,018	249,930
MAJOR LEAGUE BOWLING + RECREATION, INC.					
6/30/65	21	3,903,728	615,985	2,841,978	(236,999)
6/30/66	21	3,530,782	173,932	2,715,552	(442,053)
6/30/67	21	3,205,810	415,541	2,825,385	(161,029)
6/30/68	21	2,944,597	485,883	3,444,835	70,336

	NO OF CENTERS	NET PLANT & EQUIPMENT	NET WORTH	GROSS REVENUES	PRE-TAX PROFITS
NBO INDUSTRIES					
8/31/65	11	4,706,258	2,473,487	3,426,000	29,000
8/31/66	10	4,723,347	2,526,103	3,240,000	106,000
8/31/67	10	4,401,012	2,630,395	3,272,000	103,000
8/31/68	10	4,191,487	2,745,807	3,261,000	125,000
8/31/69	10	4,024,281	3,405,354	7,786,000	444,500
UNITED BOWLING CENTERS, INC					
6/30/65	8	1,047,150	170,345	1,436,247	(273,024)
6/30/66	8	1,843,252	246,155	1,403,420	(110,820)
6/30/67	8	2,018,639	127,490	1,424,697	(118,665)
6/30/68	7	1,807,754	15,271	1,403,647	(38,234)
6/30/69	7	1,720,413	(41543)	1,247,778	(32,376)

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BRUNSWICK CORPORATION +

	NO. OF CENTERS	NET PLANT + EQUIPMENT	NET WORTH	GROSS REVENUES	PRE-TAX PROFITS (LOSS)
12/31/65	136	76,158,000	131,581,000	335,073,000	4,078,000
				WRITE-DOWN	132,660,000)
				PRE-TAX LOSS	(128,582,000)
12/31/66	193	77,416,000	135,421,000	384,698,000	5,729,000
12/31/67	200	76,447,000	142,852,000	393,457,000	11,266,000
12/31/68	189	78,694,000	170,469,000	434,846,000	34,206,000
12/31/69					

+ Includes the following total of Canadian Centers

1965 – 10
1966 – 17
1967 – 16
1968 – 13

A1682
Exhibit P45

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ANALYSIS OF PROFIT OR (LOSS) OF BOWL CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
102	Interstate Lanes	Ramsey, New Jersey	40	(31,742)	11,392	34,581	61,475	73,144	90,682	142,567	123,268
103	Fairlawn Lanes	Fairlawn, New Jersey	32	12,022	34,870	46,713	39,083	53,288	77,723	85,350	73,837
104	Lancaster Lanes	Lancaster, Pennsylvania	32	1,978	30,001	24,247	25,944	11,677	26,621	26,128	28,727
105	Plaza Lanes	Natrona Hgts., Pennsylvania	32	(19,950)	(17,008)	(15,912)	(14,538)	(2,725)	17,755	60,437	36,800
106	Parkade Lanes	Manchester, Connecticut	32	(18,499)	16,869	20,339	16,901	14,166	23,897	39,895	41,865
107	Plaza Lanes	Haverhill, Massachusetts	20TP 12CP	(66,606)	(70,660)	(67,298)	(13,592)	-	-	-	-
108	Sunset Lanes	N. Babylon, L.I., N.Y.	32	(17,575)	30,358	19,590	8,495	21,299	37,737	69,822	99,008
109	Town & Country Lanes	Bethlehem, Pennsylvania	24	(22,087)	(4,578)	(19,681)	(4,485)	2,427	31,170	34,605	35,455
110	Parkway Lanes	Bronx, New York	44	(44,188)	2,673	27,718	41,205	48,078	21,975	25,661	76,372
112	Foxfield Lanes	Foxboro, Massachusetts	16TP 8DP	(44,579)	(48,053)	(58,950)	(21,984)	-	-	-	-
115	Colony Lanes	Wallingford, Connecticut	32	(25,818)	3,610	2,900	(6,176)	(15,851)	20,369	45,560	47,248
118	Bowl-A-Way Lanes	Burlington, Massachusetts	24 TP 16 CP	(50,038)	(25,523)	(12,866)	10,776	5,596	18,615	42,124	39,296
119	Airway Lanes	Springfield, Massachusetts	32TP 16CP	(77,196)	(16,175)	(16,577)	240	7,494	(12,537)	4,757	(14,650)
120	Blue Hen Lanes	Newark, Delaware	32	(17,870)	(9,003)	10,778	19,095	221	32,913	47,324	70,705

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ANALYSIS OF PROFIT OR (LOSS) OF BOWLING CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972	
122	Yonkers Bowl	Yonkers, New York	52	12,947	53,335	77,558	98,678	92,398	65,834	35,661	90,497	
126	Stadium Lanes	Plainville, Connecticut	32	(29,716)	(7,240)	(15,641)	(27,551)	(40,442)	2,554	26,574	44,229	
127	New City Bowl	New City, New York	24	6,964	45,041	56,627	40,705	48,324	36,893	39,422	57,440	
128	Normandy Lanes	Ellicott City, Maryland	32	(23,008)	17,659	(2,481)	17,917	29,146	43,180	81,841	104,519	
129	Maple Lanes	Marlboro, Massachusetts	20 12 CP	(48,336)	(44,906)	(27,005)	(13,494)	(16,867)	(6,416)	(1,953)	(37,882)	
130	Walnut Hill Bowl	Woonsocket, Rhode Island	32	(25,254)	2,286	11,335	19,687	2,504	(46,848)	(50,109)	(1,780)	
133	River Bowl Lanes	Bethesda, Maryland	48	1,745	92,525	102,513	103,681	107,574	112,633	163,576	141,711	
135	Perry Hall Lanes	Baltimore, Maryland	48	(30,879)	5,212	28,583	36,613	48,295	41,904	69,360	64,274	
137	Valley Lanes	Jefferson Valley, New York	24	(25,409)	676	4,230	17,196	25,554	25,793	55,132	48,436	
138	Crown Lanes	Baltimore, Maryland	40	(57,834)	(80,858)	(64,228)	(57,375)	(56,813)	(29,589)	(9,697)	15,883	
139	Bayside Lanes	Bayside, New York	48	(30,935)	25,178	47,492	57,084	42,903	76,087	58,660	79,848	
141	Arrow Lanes	Buffalo, New York	48	(44,355)	(26,735)	(19,617)	(7,393)	11,207	14,474	34,318	27,261	(1)
151 Through 160 See Page 17												
200	Lincoln Lanes	Worchester, Massachusetts	56	(28,695)	(14,192)	(8,828)	3,280	20,646	31,960	36,112	17,753	

2.

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO.OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
201	Doverama	Dover, Delaware	24	15,223	10,796	29,207	38,312	36,437	18,718	(45,025)	51,802
202	Palace Bowl	Eau Gallie, Florida	32	(4,842)	4,043	21,553	34,529	10,243	7,176	2,651	12,969
203	Imperial Bowl	Dania, Florida	54	(45,280)	(33,264)	(13,256)	2,868	16,025	31,320	25,390	48,755
204	Congress Bowl	N.Miami, Florida	52	(9,294)	(8,103)	8,822	(9,202)	25,104	48,280	51,730	(1,501)
205	Cedonia Lanes	Baltimore, Maryland	20TP 20DP	(20,341)	(7,141)	34,800	628	9,550	39,687	79,817	98,778
206	Broadview Bowl	Bedford, Indiana	24	(9,446)	9,468	5,778	1,691	(18,239)	3,800	2,201	5,189
207	Suburban Lanes	Bloomington, Indiana	24	16,375	22,433	18,780	13,156	6,732	21,270	25,374	24,962
208	Lincoln Lanes	Boonville, Indiana	16	(13,396)	(1,536)	(154)	5,140	473	7,336	12,612	11,616
209	Hunters Bowl	Huntingburg, Indiana	16	(6,462)	(3,181)	(1,323)	(5,351)	(4,456)	15,569	15,743	17,447
210	Starlite Bowl	Seymour, Indiana	24	(13,843)	35	412	(9,768)	(9,623)	14,924	4,779	6,650
211	Laurel Lanes	Washington, Indiana	24	(7,242)	(5,110)	6,550	1,741	(2,333)	5,316	2,944	18,189
212	Ridgelea Bowl	Ft.Worth, Texas	32	(55,806)	4,368	10,201	3,504	9,848	46,662	78,287	82,280
213	Bowling Palace	Kingsville, Texas	28	(26,184)	(17,499)	(20,276)	(24,458)	(26,957)	-	-	-
214	Lakeside Bowling	Morristown, N.J.	30	(34,235)	(45,347)	(36,672)	(2,843)	-	-	-	

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
215	Sunny Isle Lanes	N.Miami, Florida	32	(32,145)	(52,735)	(5,658)	-	-	-	-	-
216	Lido Lanes	Newark, New Jersey	24	(41,596)	(49,296)	(51,047)	(3,258)	8,071	6,609	25,629	18,734
217	Moffat	Brooklyn, New York	24	(17,135)	(8,860)	(60,914)	-	-	-	-	-
218	Belmont Lanes	Pueblo, Colorado	24	(25,789)	(4,241)	1,264	(20,075)	(21,820)	(20,213)	6,328	18,253
219	Fair Lanes	Sterling, Colorado	20	(18,347)	(19,899)	(24,338)	4,277	-	-	-	-
220	Circle Lanes	Colorado Springs, Colorado	32	(21,905)	(64,753)	(39,828)	(44,398)	(9,119)	5,790	30,650	64,967
221	Lauderdale Lanes	Ft. Lauderdale, Florida	40	(72,493)	(52,374)	(14,802)	(11,826)	33,373	43,015	81,823	71,247
222	Ten Pin Lanes	E.Providence, Rhode Island	60	(40,169)	(24,889)	(8,046)	5,811	29,166	22,417	50,035	55,199
223	Collegiate Bowl	Albion, Michigan	20	(818)	7,651	8,601	(7,689)	(40)	(13,033)	(5,001)	(9,307)
224	Baden Bowl	Baden, Pennsylvania	24	(21,759)	(12,606)	(3,025)	14,091	33,460	32,552	28,881	25,589
225	Holyoke Lanes	Holyoke, Massachusetts	32TP 12CP	(37,602)	(18,064)	(18,317)	(18,039)	3,889	(11,290)	3,210	26,195
226	Lowell Lanes	Lowell, Massachusetts	44	(25,106)	(29,922)	(21,212)	(21,790)	(401)	9,783	25,582	10,406
227	Northampton Lanes	Northampton, Massachusetts	22TP 10CP	(22,816)	3,726	1,685	2,036	2,023	15,278	22,726	22,309
228	Warwick Lanes	Warwick, Rhode Island	44	(25,318)	7,152	9,896	8,378	15,344	20,165	63,661	62,191

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
244	Bruns. Roxy Alleys	New York, New York	22	(19,054)	(7,146)	(53,801)	(13,354)	(1,114)	(39,614)	(54,550)	(167,584)
245	Bruns. Center Lanes	Newton, Iowa	16	(4,754)	(3,398)	(643)	12,793	10,435	15,880	11,002	1,440
246	Bruns. Granada Lanes	Granada Hills, California	48	(14,904)	8,938	(59,447)	(18,101)	17,179	18,436	66,549	122,304
247	Bruns. Tri-City Bowl	Sheffield, Alabama	30	(31,230)	(14,732)	(662)	-	-	-	-	-
248	Bruns. Shoreway Lanes	Sheffield Lake, Ohio	24	(3,104)	12,152	25,583	40,579 [1]	44,500	39,851	51,505	68,608
249	Paris Lanes	Paris, Texas	16	(20,885)	(10,014)	(12,550)	(7,902)	84	13,329	31,399	13,405
250	Ramona Lanes	Jacksonville, Florida	32	(17,192)	(14,286)	(12,178)	(19,941)	(7,124)	1,772	10,337	27,753
251	Lenox Lanes	Atlanta, Georgia	18	(10,572)	(6,260)	4,719	(3,691)	(9,805)	10,256	(10,805)	25,018
252	Bourbon Bowl	Paris, Kentucky	16	2,152	7,236	(393)	3,336	11,848	15,635	3,890	15,616
253	Magnolia Lanes	Arlington, California	32	(25,860)	(11,510)	(21,234)	(1,363)	25,396	23,391	24,639	53,760
254	Olympic Center	Middletown, Kentucky	32	(22,613)	(22,256)	(26,719)	(682)	-	-	-	-
255	Bowl-A-Rama	Muskogee, Oklahoma	20	(17,987)	(9,588)	(22,422)	(34,589)	(29,233)	(17,064)	-	-
256	Plaza Lanes	St. Charles, Missouri	24	(9,205)	(2,598)	4,104	20,723	34,149	40,635	44,734	7,477
257	Pimingo Lanes	Goody, Kentucky	20	(4,931)	(6,585)	(13,287)	(690)	-	-	-	-

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO OF LANES	1965	1966	1967	1968	1969	1970	1971	197
229	Bayshore Bowl	S.SanFrancisco California	24	(28,922)	(29,149)	(24,658)	(859)	-	-	-	-
230	Beechwood Bowl	Athens, Georgia	24	(30,972)	3,139	7,319	8,634	25,807	21,119	29,513	13,594
231	Northland Bowl	Tulsa, Oklahoma	32	(33,110)	(14,150)	(40,687)	2,377	-	-	-	-
232	Vestavia Lanes	Birmingham, Alabama	40	(22,540)	(47,012)	-	-	-	-	-	-
233	Coronado Lanes	Oklahoma City, Okalahoma	24	(8,268)	(14,046)	(10,444)	(15,083)	5,643	34,458	36,450	26,609
234	Bruns.Center Ridge Lanes	N. Ridgeville, Ohio	34	(2,364)	(20,579)	17,926	22,496	24,262	35,724	82,431	127,299
236	Tri Mor Bowl	Granite City, Illinois	32	(20,339)	(17,296)	(12,300)	853	23,317	1,444	22,684	30,787
237	Freeway Lanes	Providence, Rhode Island	44	(28,748)	(32,921)	(15,445)	(6,580)	-	-	-	-
238	Bowlero Bowl	Lemon Grove, California	40	(70,219)	(34,466)	(48,566)	(63,898)	(12,685)	(90)	28,753	28,499
239	Portland Lanes	Portland, Indiana	16	(11,296)	(14,082)	(5,176)	(351)	-	-	-	-
240	Sunbowl	Portland, Oregon	24	(15,878)	(18,732)	(26,964)	(20,851)	(16,515)	(14,896)	(5,517)	(408)
241	Bowladrome	Twin Falls, Idaho	24	(9,247)	10,537	336	9,700	4,550	27,135	11,183	3,522
242	Bruns.Sunset Lanes	Beaverton, Ore.	36	(16,954)	(12,883)	(24,320)	17,012	48,980	82,098	96,667	100,366
243	Bruns.Santa Paula	Santa Paula.	20	(19,723)	(42,989)	(35,808)	(50,375)	(65,339)	(37,141)	-	-

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
258	Amity Bowling Center	Woodbridge, Connecticut	24	(7,409)	(5,726)	692	19,170	22,674	42,408	60,381	40,219
259	Twin City Lanes	Council Bluffs, Iowa	16	(17,822)	(15,888)	(8,714)	(8,792)	7,756	11,345	9,347	23,700
260	Gamecock Lanes	Sumpter, South Carolina	24	(5,120)	22,534	3,202	3,609	9,880	17,539	42,444	34,812
261	Charger Lanes	Barberton, Ohio	32	(4,819)	24,435	48,198	38,941	26,483	47,851	56,789	38,846
262	College Plaza	Alliance, Ohio	32	(448)	(7,798)	(32,498)	(28,116)	(25,413)	8,552	17,025	51,596
263	Mt. Vernon Lanes	Mt. Vernon, Ohio	24	261	32,439	3,788	4,001	6,425	1,392	(2,717)	(2,320)
264	Americana Lanes	Ozone Park, New York	64	14,964	8,004	67,393	54,414	45,171	134,212	181,357	117,405
265	Roosevelt Lanes	Roosevelt, New York	40	537	(42,334)	(48,315)	(36,549)	(24,034)	-	-	-
266	Willow Lanes	McCook, Nebraska	16	(4,386)	(14,361)	-	-	-	-	-	-
267	Alameda Lanes	Denver, Colorado	16	(3,560)	(18,312)	(11,405)	(2,869)	-	-	-	-
268	Lakeland Lanes	Lakeland, Florida	24	(24,882)	51,679	31,107	32,102	45,603	34,102	65,702	77,480
269	Capital Bowling Center	Austin, Texas	32	(6,860)	(16,777)	(15,600)	25,596	24,693	30,346	29,148	37,329
270	South Park Lanes	S. Milwaukee, Wisconsin	32	(1,596)	(32,080)	(13,713)	(7,218)	(3,491)	9,749	(14,255)	44,695
271	Elitch Lanes	Denver, Colorado	24	1,769	(17,373)	(15,588)	191	23,059	48,386	65,732	64,077

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
272	Hilldale Bowl	Madison, Wisconsin	48	9,336	(42,365)	(43,692)	(49,301)	(45,916)	-	-	-
273	Euclid Green Lanes	Cleveland, Ohio	32	509	(25,219)	(38,983)	(32,141)	(26,866)	(36,163)	(35,765)	(10,878)
274	Austin Highway Bowling Center	San Antonio, Texas	24	(17,073)	(35,500)	(14,164)	11,692	(18,216)	5,952	8,953	-
275	Red Fox Lanes	Long Beach, California	32	(1,485)	14,338	469	(20,575)	(4,883)	12,813	24,674	42,606
276	Ball & Pin Lanes	Lombard, Illinois	24	(12,506)	(8,806)	36,741	52,881	58,136	75,051	87,829	29,694
277	Starlite Lanes	Knoxville, Tennessee	24	(1,495)	1,329	(15,971)	11,588	17,234	31,966	23,978	33,353
278	Pel Park Lanes	Bronx, New York	31	6,069	34,341	22,961	21,227	154	26,476	50,557	65,368
279	Carriage House Lanes	Minneapolis, Minnesota	32	2,776	10,148	16,897	10,820	(12,894)	24,885	56,989	63,901
280	Skylark Bowl	Petersburg, Virginia	16	(12,112)	(8,324)	-	-	-	-	-	-
281	Wescal Lanes	Sulpher, La.	16	(12,873)	(17,417)	(23,215)	(4,053)	-	-	-	-
282	Coastal Bend Lanes	Aransas Pass, Texas	16	(1,462)	(11,842)	(11,237)	(4,235)	(10,512)	687	(6,755)	2,683
283	Sun Valley Lanes	Boswell, Georgia	16	(6,421)	(26,641)	(14,063)	(155)	-	-	-	-
284	Hoffman Heights Bowl	Aurora, Colorado	24	(137)	(40,940)	(33,250)	(29,894)	(18,158)	(12,898)	13,138	30,038
285	Rubidoux Bowl	Riverside, California	24	(8,519)	(20,785)	(15,789)	75	-	-	-	-

ANALYSIS OF PROFIT OR (LOSS) OF BOWL CENTERS

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CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
286	Harcoal Lanes	Harlan, Kentucky	17	(8,939)	(23,712)	(12,477)	-	-	-	-	-
287	Wise County Bowling Center	Wise, Virginia	20	(290)	(12,274)	(4,131)	-	-	-	-	-
288	St. Albans Bowl	St. Albans, New York	29	173	(45,583)	(29,314)	-	-	-	-	-
289	Cochise Bowl	Douglas, Arizona	16	(4,006)	4,788	-	-	-	-	-	-
290	Village Lanes	Chicago, Illinois	16	1,168	(2,111)	(1,603)	14,604	(3,617)	(4,078)	35,103	20,954
291	Deland Lanes	Deland, Florida	24	(205)	(17,676)	(5,244)	(12,121)	(3,032)	236	463	5,878
292	Hurricane Bowl	Marion, Virginia	16	580	(7,43	431	(1,699)	26	(3,040)	5,847	12,120
293	Bruns. Friendly Lanes	Greensboro, North Carolina	40	1,498	(12,012)	(2,477)	(3,994)	(5,616)	32,204	119,263	144,626
294	College Village Lanes	High Point, North Carolina	32	184	(32,003)	-	-	-	-	-	-
295	Bruns. Shelby Lanes	Shelby, North Carolina	24	(110)	(23,742)	(11,949)	-	-	-	-	-
296	Bowlerland Lanes	Van Nuys, California	32	(23,063)	(17,726)	(21,929)	(21,903)	(26,062)	(5,767)	28,289	45,069
297	Sanger Lanes	Sanger, California	16	(68)	(33,602)	(10,136)	-	-	-	-	-
298	Dutchess Lanes	Poughkeepsie, New York	26	(5,192)	(30,755)	(28,776)	(23,279)	-	-	-	-
299	Cabrillo Lanes	Watsonville, California	24	3,151	14,668	-	-	-	-	-	-

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

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CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
300	Applewood Lanes	Golden, Colorado	16	(4,507)	(38,848)	(12,609)	(16,945)	(8,096)	1,091	15,215	24,893
301	Broadmoor Bowl	Denver, Colorado	32	2,164	9,421	(4,349)	30,538	(8,951)	24,609	57,442	60,728
302	Bruns. Rossmoor Bowling Center	Los Alamitos, California	40		(5,168)	18,949	(377)	29,831	72,325	135,905	98,614
303	Bruns. Bowlerland	Ft. Worth, Texas	32		(49,691)	(22,937)	10,360	28,246	34,426	37,047	33,098
304	Matador Bowl	Northbridge, California	24		2,178	(17,599)	(19,599)	(34,180)	(16,777)	31,683	49,383
305	Bruns. Olive Ave. Bowl	Porterville, California	16		17,043	6,833	4,213	(5,379)	3,011	(2,667)	(2,789)
306	Palmetto Lanes	Rock Hill, South Carolina	32		(20,716)	(21,262)	-	-	-	-.	-
306	Palmetto Lanes	Rock Hill, South Carolina	24		-	-	(12,114)	(25,775)	(6,184)	15,346	24,831
307	Woodhaven Lanes	Glendale, New York	60		(55,048)	36,960	-	-	-	-	121,487
307	Woodhaven Lanes	Glendale, New York	52		-	-	12,190	17,342	83,751	120,099	-
308	Bruns. Cypress Lanes	Winter Haven, Florida	16		25,899	27,735	20,839	28,394	30,511	35,783	33,618
309	Bruns. Colony Bowl	Brooklyn, New York	48		(17,224)	12,436	(30,996)	(66,972)	-	-	-
310	King of Prussia	King of Prussia, Pennsylvania	32		(42,205)	(61,710)	(22,572)	(4,035)	3,881	45,270	27,806
311	Bruns. Royal Lanes	W. Hempstead, L.I., N.Y.	48		(22,806)	(5,211)	(16,902)	905	(18,470)	(7,973)	8,953

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO.OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
312	Bloomfield Bowl-O-Mat	Bloomfield, New Jersey	40		(27,295)	(17,447)	(9,994)	5,745	22,584	5,776	33,601
313	Ronnell Bowl	Sylmar, California	32		(25,219)	(34,819)	(53,205)	(36,309)	(56,541)	(17,186)	-
314	Bruns.King Pin Lanes	Garfield Heights, Ohio	32		13,030	191	(5,707)	(11,948)	5,142	14,979	27,509
315	Suburban Lanes	Decatur, Georgia	32		(2,990)	9.960	(600)	12,624.	34,204	50,578	73,121
316	Bruns.Freedom Lanes	Charlotte, North Carolina	32		269	13,618	20,233	45,060	38,833	64,383	62,418
317	Bruns.Holiday Lanes	LaCrosse, Wisconsin	40		(75,989)	(30,712)	(3,506)	--	--	--	--
318	J.Town Lanes	JeffersonTown, Kentucky	24		(7,011)	1,873	21,136	14,790	21,828	52,958	60,513
319	Bruns.Mil Sher Lanes	Tonawanda, New York	36		(12,683)	26,883	23,333	18,373	36,843	51,277	61,603
320	Bruns.Briar Hill Lanes	Briar Cliff Manor, New York	24		(10,674)	13,532	(7,997)	(24,081)	(8,553)	(43,104)	(28,706)
322	Bruns. Monmouth Lanes	Long Branch, New Jersey	32		(6,178)	(3,229)	27,974	29,040	29,613	37,321	6,474
323	Bruns.Airport Plaza Lanes	Hazlet, New Jersey	32		(19,196)	17,208	33,662	69,045	64,092	91,029	85,912
324	Bruns.E.Port Bowl	Elizabeth, New Jersey	32		(15,608)	(28,042)	7,125	--	--	--	--
325	Bruns.Lincoln Lanes	Merril, Wisconsin	16		(9,019)	(5,793)	(8,463)	6,575	--	--	--
326	Holiday Lanes	Johnson City, Tennessee	24		(536)	8,652	2,616	8,708	18,704	48,511	69,627

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
327	Bruns.Belmont Bowl	Smyrnia, Georgia	24		1,437	26,944	28,404	43,138	40,485	42,406	52,612
329	Bruns. Fiesta Lanes	Lubbock, Texas	24		(13,128)	(18,590)	(11,027)	(8,875)	(22,241)	(22,298)	-
330	Escondido Bowl	Escondido, California	24		(20,202)	(51,043)	(55,942)	(59,240)	(29,229)	(9,947)	13,227
331	Bruns. Olumpia Bowl	Belleville, New Jersey	32		(14,944)	(52,687)	(22,948)	45,528	68,468	72,154	76,287
332	Town & Country Lanes	Midvale, Utah	18		(13,471)	(15,376)	(15,744)	(10,320)	(6,239)	(3,426)	1,911
333	Bruns. Plaza Bowl	Virginia Beach, Virginia	40		10,269	21,971	22,473	58,736	79,388	101,718	89,731
334	Bruns. Rainbow Lanes	Brooklyn, New York	56		(2,219)	64,215	79,110	71,111	59,537	94,894	88,334
335	Holiday Bowl	Groves, Texas	32		(7,908)	6,835	(114)	(14,224)	2,182	34,045	14,373
336	Sterling Village Lanes	Reno, Nevada	20		(8,864)	(13,585)	(4,132)	5,682	34,420	54,360	53,678
337	Bruns. Bowlero	Tulsa, Oklahoma	24		(4,354)	(26,170)	(10,398)	(6,477)	(7,361)	(783)	(14,598)
338	Bruns. Cherokee Bowl	Independence, Kentucky	16		(247)	1,786	(8,848)	(5,089)	9,010	22,104	27,829
339	Wonder Bowl	Downey, California	64		(43,527)	(107,831)	(162,643)	(83,941)	(22,196)	40,972	82,442
340	Bruns. Hixon Lanes	Hixon, Tennessee	32		(7,762)	(41,953)	(15,606)	(6,585)	1,647	22,158	29,628
341	Bowlhaven Lanes	White Haven, Tennessee	36		12,398	37,967	51,334	54,285	78,565	84,993	88,999

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
342	Bruns. Shorecrest Bowl	Racine, Wisconsin	24		(9,347)	(10,806)	(8,263)	(7,341)	10,623	17,894	21,975
343	Surf Bowl	Santa Cruz, California	26		5,165	(18,079)	(15,423)	(38,250)	(9,309)	3,265	9,958
344	Bruns. Rose Bowl	Buffalo Grove, Illinois	24		10,215	(39,449)	16,368	31,132	45,354	4,480	-
345	Carteret Lanes	Carteret, New Jersey	32		364	(34,316)	(15,817)	25,359	4,923	(12,665)	(377)
346	Bruns. Keglers	Morgan City, Louisiana	24		(4,992)	(37,168)	(12,412)	(21,596)	4,190	(6,955)	(4,825)
347	Thunderbird Lanes	Boulder, Colorado	24		3,733	12,963	2,288	11,526	25,465	61,400	62,580
348	Hollywood Legion Lanes	Hollywood, California	44		10,815	2,761	(1,442)	3,023	17,658	45,539	38,175
349	Bruns. Wonderbowl	Anaheim, California	48		3,925	(39,045)	8,908	69,831	126,828	174,371	141,431
350	Bruns. Delta Bowl	Antoich, California	24			(16,906)	(16,171)	(10,634)	4,131	32,158	41,832
351	Bruns. Baldwin Park Bowl	Baldwin, California	32			(46,891)	(84,752)	(38,446)	-	-	-
352	Town & Country Lanes	Pomona, California	32			(72,350)	-	-	-	-	-
353	Coral Carlin Bowl	Stuart, Florida				(6,665)	-	-	-	-	-
354	Santa Fe Lanes	Wittier, California	32			(33,277)	(76,175)	14,937	41,001	41,881	7,875
355	Royal Oaks Lanes	Duarte, California	24			(22,477)	(66,137)	(55,725)	(57,791)	(25,846)	-

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO.OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
356	Stardust Lanes	Delano, California	16			(30,907)	(1,087)	--	--	--	--
357	Hillcrest Lanes	Sedalia, Missouri	16			(11,215)	7,623	--	--	--	--
358	Murray's 51 Bowl	Belle Vernon, Pennsylvania	36			(11,988)	(65,687)	(47,374)	(280)	932	(2,344)
359	Bruns.Camden Lanes	Camden, New Jersey	64			(989)	29,470	8,478	24,458	55,577	55,360
360	Bruns.Creole Lanes	Vincennes, Indiana	16			2,926	3,826	5,955	(8,044)	2,640	5,047
361	Medallion Lanes	Maitland, Florida	24			(5,210)	(21,673)	1,229	23,760	57,206	69,477
362	Bruns.Banning Bowl	Banning, California	16			(10,049)	(41,866)	(34,485)	(1,240)	--	--
363	Bruns.Chalet Bowl	Crystal, Minnesota	24			2,032	(14,957)	(61)	21,493	19,084	5,688
364	Lane Park Lanes	Sacramento, California	32			(26)	4,526	49,175	23,626	62,677	63,822
365	East End Bowl	New York, New York	32				(4,731)	24,243	63,476	94,425	80,696
366	College Lanes	New Platz, New York	24				4,585	9,738	2,384	24,674	16,446
367	Guys & Dolls Lanes	Pittsburg, Pennsylvania	32				(23,422)	2,610	(7,453)	--	--
367	Guys & Dolls Lanes	Pittsburg, Pennsylvania	36				--	--	--	21,364	33,560
368	Holiday Lanes	Denton, Texas	20				(6,097)	2,225	11,674	38,127	38,411

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO.OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
369	Monroe Lanes	Covington, Virginia	16				(12,782)	(8,648)	(8,001)	1,004	(8,604)
370	Coliseum Lanes	Charlotte, North Carolina	40				(16,901)	22,675	67,631	88,848	102,923
371	Bruns.Holiday Bowl	Lawton, Ohio	24				(10,666)	(25,358)	(9,797)	26,980	35,201
372	Bruns. Classic Lanes	Athens, Tennessee	16				(432)	(1,516)	(8,396)	1,191	(1,365)
373	B. Camarillo Lanes	Camarillo, California	20				(15,690)	(54,368)	(38,485)	(12,406)	(5,734)
374	Bruns.Edison Bowl-O-Mat	Edison, New Jersey	40					(11,479)	25,305	62,344	57,151
375	Cocoa Bowl-O-Rama	Cocoa, Florida	24					(20,055)	8,180	(4,970)	4,856
376	Western Bowl	Chicago Hgts. Illinois	24					(9,305)	85,159	98,621	99,980
377	Street Lanes	Feasterville, Pennsylvania	32					(25,885)	33,509	44,642	36,496
378	El Cajon Bowl	El Cajon, California	24					(64,381)	(35,252)	9,236	(2,424)
379	Iceland Bowl Bruns. Main Cor.	Albuquerque, New Mexico	32					(13,673)	(33,302)	(19,976)	--
380	Playmor Bowl	Pittsburg, Pennsylvania	32					(24,782)	(522)	(8,120)	3,145
381	Tenpin on the Mall	Paramus, New Jersey	36					(2,564)	(8,131)	6,945	(2,036)
382	Parkwood Lanes	Orlando, [illegible]	32					(27,615)	(25,663)	43,920	21,236

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
383	Sands Bowl	Lancaster, California	32					(23,294)	(3,745)	13,666	35,965
385	Northern Bowl	Glendale Hgts., Illinois	32						341	56,924	(4,368)
386	Wayne Rec. Center	Ft. Wayne, Indiana	32						(53,170)	13,363	3,288
387	Mountain Lanes	Wausau, Wisconsin	24						(27,182)	(16,947)	10,214
388	Janes Lanes	Marshfield, Wisconsin	24						(22,330)	1,359	(24,782)
389	Lodi Lanes	Lodi, New Jersey	40						(27,013)	5,030	(46,499)
391	Rahway Recreation	Rahway, New Jersey	24						2,576	22,007	6,675
392	Brunswick Lakeshore	Gainsville, Georgia	24						3,657	965	(6,089)
393	Carollton Bowl	Bridgeton, Missouri	24							914	11,001
394	Bruns. Orange Bowl	Orange, California	32							75,023	60,900
395	Sharpstown Bowl	Sharpstown, Texas	32							(11,170)	139,627
396	Ottumwa Lanes	Ottumwa, Iowa	24							(32,696)	(29,474)
397	Gladstone Bowl	Gladstone, Missouri	24							32,539	65,529
398	Harris Hill Lanes	Buffalo, New York	24							-	-

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
151	Olympic Bowl	Rochester, New York	72 8 other	-	-	-	-	-	-	-	153,302
152	Fairview Lanes	Fairport, New York	24	-	-	-	-	-	-	-	36,556
153	Ithaca Bowl	Ithaca, New York	24	-	-	-	-	-	-	-	24,975
154	Watertown Bowl	Watertown, New York	48	-	-	-	-	-	-	-	76,268
155	Corning Bowl	Corning, New York	32	-	-	-	-	-	-	-	92
156	Oswego Pinerama	Oswego, New York	32	-	-	-	-	-	-	-	34,173
157	Coral Lanes	Olean, New York	24	-	-	-	-	-	-	-	18,680
158	Fulton Bowlerama	Fulton, New York	24	-	-	-	-	-	-	-	16,570
159	Seaway Lanes	Massena, New York	24	-	-	-	-	-	-	-	17,726
160	Holiday Bowl	Syracuse, New York	48	-	-	-	-	-	-	-	49,432

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CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
102	Interstate Lanes	Ramsey, New Jersey	40	(31,742)	11,392 (12,531)	34,581 10,539	61,475 25,748	73,144 28,760	90,682 45,698	142,567 104,757	123,268 90,076
103	Fairlawn Lanes	Fairlawn, New Jersey	32	12,022	34,870 15,976	46,713 26,876	39,083 19,432	53,288 34,324	77,723 58,049	85,350 67,194	73,837 56,335
104	Lancaster Lanes	Lancaster, Pennsylvania	32	1,978	30,001 6,582	24,247 2,788	25,944 2,676	11,677 (14,469)	26,621 553	26,128 2,145	28,727 4,121
105	Plaza Lanes	Natrona Hgts., Pennsylvania	32	(19,950)	(17,008) (39,087)	(15,912) (38,124)	(14,538) (36,290)	(2,725) (32,165)	17,755 (20,053)	60,437 25,057	36,800 9,057
106	Parkade Lanes	Manchester, Connecticut	32	(18,499)	16,869 (7,158)	20,339 (4,038)	16,901 (5,623)	14,166 (7,478)	23,897 449	39,895 17,753	41,865 20,065
107	Plaza Lanes	Haverhill, Massachusetts	20TP 12CP	(66,606)	(70,660) (70,773)	(67,298) (69,960)	(13,592) *	- -	- -	- -	- -
108	Sunset Lanes	N. Babylon, L.I., N.Y.	32	(17,575)	30,358 7,905	19,590 (3,766)	8,495 (13,228)	21,299 543	37,737 13,903	69,822 47,791	99,008 77,510
109	Town & Country Lanes	Bethlehem, Pennsylvania	24	(22,087)	(4,578) (22,903)	(19,681) (36,280)	(4,485) (19,370)	2,427 (18,234)	31,170 5,739	34,605 10,971	35,455 13,363
110	Parkway Lanes	Bronx, New York	44	(44,188)	2,673 (12,306)	27,718 13,281	41,205 32,032	48,078 28,557	21,975 (6,242)	25,661 (1,315)	76,372 48,942
112	Foxfield Lanes	Foxboro, Massachusetts	16TP 8DP	(44,579)	(48,053) (51,858)	(58,950) (36,048)	(21,984) *	- -	- -	- -	- -
115	Colony Lanes	Wallingford, Connecticut	32	(25,818)	3,610 (16,492)	2,900 (17,857)	(6,176) (25,608)	(15,851) (34,735)	20,369 (9,723)	45,560 8,820	47,248 11,204
118	Bowl-A-Way Lanes	Burlington, Massachusetts	24TP 16CP	(50,038)	(25,523) (21,794)	(12,866) (12,451)	10,776 13,182	5,596 8,508	18,615 6,484	42,124 19,798	39,296 16,135
119	Airway Lanes	Springfield, Massachusetts	32TP 16CP	(77,196)	(16,175) (31,275)	(16,577) (27,795)	240 (8,339)	7,494 (235)	(12,537) (31,424)	4,757 (29,236)	(14,650) (48,975)
120	Blue Hen Lanes	Newark, Delaware	32	(17,870)	(9,003) (33,242)	10,778 (13,217)	19,095 (3,780)	221 (22,165)	32,913 2,690	47,324 13,013	70,705 39,219

NEW 15A

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
122	Yonkers Bowl	Yonkers, New York	52	12,947	53,335 13,872	77,558 38,403	98,678 59,936	92,398 54,413	65,834 28,698	35,661 4,248	90,497 57,808
126	Stadium Lanes	Plainville, Connecticut	32	(29,716)	(7,240) (31,955)	(15,641) (40,464)	(27,551) (51,309)	(40,442) (62,741)	2,554 (27,535)	26,574 (8,736)	44,229 8,490
127	New City Bowl	New City, New York	24	6,964	45,041 31,107	56,627 39,428	40,705 27,435	48,324 36,816	36,893 33,462	39,422 43,514	57,440 57,567
128	Normandy Lanes	Ellicott City, Maryland	32	(23,008)	17,659 (6,364)	(2,481) (26,642)	17,917 (5,747)	29,146 7,160	43,180 12,654	81,841 50,072	104,519 75,236
129	Maple Lanes	Marlboro, Massachusetts	20 12CP	(48,336)	(44,906) (49,784)	(27,005) (33,777)	(13,494) (19,614)	(16,867) (22,367)	(6,416) (11,118)	(1,953) (16,267)	(37,882) (58,715)
130	Walnut Hill Bowl	Woonsocket, Rhode Island	32	(25,254)	2,286 (20,441)	11,335 (11,046)	19,687 (1,657)	2,504 (18,510)	(46,848) (62,597)	(50,109) (59,759)	(1,780) (15,240)
133	River Bowl Lanes	Bethesda, Maryland	48	1,745	92,525 57,163	102,513 65,555	103,681 68,048	107,574 73,637	112,633 78,691	163,576 130,164	141,711 109,802
135	Perry Hall Lanes	Baltimore, Maryland	48	(30,879)	5,212 (34,241)	28,583 (17,246)	36,613 (2,131)	48,295 11,223	41,904 5,928	69,360 38,263	64,274 30,988
137	Valley Lanes	Jefferson Valley New York	24	(25,409)	676 (12,053)	4,230 (10,980)	17,196 2,270	25,554 11,097	25,793 11,382	55,132 43,819	48,436 36,594
138	Crown Lanes	Baltimore, Maryland	40	(57,834)	(80,858) (107,936)	(64,228) (95,834)	(57,375) (87,583)	(56,813) (86,335)	(29,589) (58,994)	(9,697) (38,684)	15,883 (23,946)
139	Bayside Lanes	Bayside, New York	48	(30,935)	25,178 1,829	47,492 12,626	57,084 31,247	42,903 7,393	76,087 39,739	58,660 27,483	79,848 48,968
141	Arrow Lanes	Buffalo, New York	48	(44,355)	(26,735) (62,134)	(19,617) (60,206)	(7,393) (41,350)	11,207 (23,599)	14,474 (20,170)	34,318 5,124	27,261 (1) (11,252)
151 Through 160 See Page											
200	Lincoln Lanes	Worchester, Massachusetts	56	(28,695)	(14,192) (63,459)	(8,828) (56,932)	3,280 (41,020)	20,646 (24,370)	31,960 (28,464)	36,112 (28,173)	17,753 (45,383)

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
201	Doverama	Dover, Delaware	24	15,223	10,796 (11,720)	29,207 13,307	38,312 22,984	36,437 21,578	18,718 374	(45,025) (29,907)	51,802 122,248
202	Palace Bowl	Eau Gallie, Florida	32	(4,842)	4,043 (24,384)	21,553 (6,133)	34,529 6,724	10,243 (17,114)	7,176 (28,032)	2,651 (33,622)	12,969 (21,295)
203	Imperial Bowl	Dania, Florida	54	(45,280)	(33,264) (82,234)	(13,256) (61,359)	2,868 (44,616)	16,025 (31,863)	31,320 (16,298)	25,390 (14,282)	48,755 606
204	Congress Bowl	N. Miami, Florida	52	(9,294)	(8,103) (52,483)	8,822 (35,306)	(9,202) (52,016)	25,104 (15,422)	48,280 8,867	51,730 16,543	(1,501) (34,765)
205	Cedonia Lanes	Baltimore, Maryland	20TP 20DP	(20,341)	(7,141) (17,303)	34,800 27,368	626 (6,063)	9,550 4,456	39,687 35,276	79,817 78,750	98,778 93,546
206	Broadview Bowl	Bedford, Indiana	24	(9,446)	9,468 (12,876)	5,778 (16,416)	1,691 (20,207)	(18,239) (40,049)	3,800 (24,963)	2,201 (26,887)	5,189 (23,669)
207	Suburban Lanes	Bloomington, Indiana	24	16,375	22,433 (702)	18,780 (4,181)	13,156 (9,048)	6,732 (15,154)	21,270 (1,012)	25,374 (720)	24,962 (20)
208	Lincoln Lanes	Boonville, Indiana	16	(13,396)	(1,536) (17,032)	(154) (15,643)	5,140 (10,190)	473 (14,646)	7,336 (7,758)	12,612 (5,055)	11,616 (7,444)
209	Hunters Bowl	Huntingburg, Indiana	16	(6,462)	(3,181) (17,909)	(1,323) (15,873)	(5,351) (19,769)	(4,456) (18,912)	15,569 1,053	15,743 2,681	17,447 (104)
210	Starlite Bowl	Seymour, Indiana	24	(13,843)	35 (23,181)	412 (22,852)	(9,768) (32,898)	(9,623) (32,651)	14,924 (8,205)	4,779 (22,199)	6,650 (22,378)
211	Laurel Lanes	Washington, Indiana	24	(7,242)	(5,110) (27,678)	6,550 (16,026)	1,741 (20,368)	(2,333) (24,009)	5,316 (16,517)	2,944 (16,734)	18,189 (7,271)
212	Ridgelea Bowl	Ft. Worth, Texas	32	(55,806)	4,368 (26,426)	10,201 (19,317)	3,504 (11,576)	9,848 (14,738)	46,662 14,113	78,287 46,335	82,280 55,633
213	Bowling Palace	Kingsville, Texas	28	(26,184)	(17,499) (44,947)	(20,276) (47,846)	(24,458) (46,457)	(26,957) *	- -	- -	- -
214	Lakeside Bowling	Morristown, New Jersey	30	(34,235)	(45,347) (66,746)	(36,672) (66,577)	(2,843) *	- -	- -	- -	- -

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
215	Sunny Isle Lanes	N. Miami, Florida	32	(32,145)	(52,735) (83,539)	(5,658) *	- -	- -	- -	- -	- -
216	Lido Lanes	Newark, New Jersey	24	(41,596)	(49,296) (68,749)	(51,047) (69,435)	(3,258) (21,591)	8,071 (9,743)	6,609 (11,354)	25,629 3,005	18,734 (7,629)
217	Moffat	Brooklyn, New York	24	(17,135)	(8,860) (30,842)	(60,914) *	- -	- -	- -	- -	- -
218	Belmont Lanes	Pueblo, Colorado	24	(25,789)	(4,241) (25,320)	1,264 (17,026)	(20,075) (33,346)	(21,820) (33,710)	(20,213) (31,908)	6,328 (3,202)	18,253 7,585
219	Fair Lanes	Sterling, Colorado	20	(18,347)	(19,899) (37,152)	(24,338) (34,723)	4,277 * -	— -	- -	- -	- -
220	Circle Lanes	Colorado Springs, Colorado	32	(21,905)	(64,753) (91,607)	(39,828) (38,896)	(44,398) (57,710)	(9,119) (21,312)	5,790 (5,774)	30,650 21,564	64,967 55,752
221	Lauderdale Lanes	Ft. Lauderdale, Florida	40	(72,493)	(52,374) (83,571)	(14,802) (59,839)	(11,826) (43,093)	33,373 2,412	43,015 12,071	81,823 56,541	71,247 48,406
222	Ten Pin Lanes	E. Providence, Rhode Island	60	(40,169)	(24,889) (79,840)	(8,046) (63,334)	5,811 (46,789)	29,166 (21,245)	22,417 (39,664)	50,035 (19,129)	55,199 (14,611)
223	Collegiate Bowl	Albion, Michigan	20	(818)	7,651 (8,637)	8,601 (7,550)	(7,689) (20,156)	(40) (12,202)	(13,033) (25,533)	(5,001) (15,413)	(9,307) (25,612)
224	Baden Bowl	Baden, Pennsylvania	24	(21,759)	(12,606) (32,471)	(3,025) (22,065)	14,091 (5,445)	33,460 14,293	32,552 9,994	28,881 3,972	25,589 917
225	Holyoke Lanes	Holyoke, Massachusetts	32TP 12CP	(37,602)	(18,064) (46,713)	(18,317) (46,133)	(18,039) (45,280)	(3,889) (22,812)	(11,290) (43,358)	3,210 (32,488)	26,195 (9,815)
226	Lowell Lanes	Lowell, Massachusetts	44	(25,106)	(29,922) (70,604)	(21,212) (61,820)	(21,790) (61,843)	(401) (40,255)	9,783 (36,192)	25,582 (24,092)	10,406 (37,109)
227	Northampton Lanes	Northampton, Massachusetts	22TP 10CP	(22,816)	3,726 (15,887)	1,685 (17,162)	2,036 (16,314)	2,023 (15,175)	15,278 (6,521)	22,726 (778)	22,309 (271)
228	Warwick Lanes	Warwick, Rhode Island	44	(25,318)	7,152 (33,472)	9,896 (30,659)	8,378 (31,237)	15,344 (23,584)	20,165 (24,508)	63,661 12,328	62,191 10,853

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
229	Bayshore Bowl	S. San Francisco California	24	(28,922)	(29,149) (47,554)	(24,658) (52,361)	(859) - *	-	-	-	-
230	Beechwood Bowl	Athens, Georgia	24	(30,972)	3,139 (17,483)	7,319 (13,357)	8,634 (11,312)	25,607 2,395	21,119 (9,080)	29,513 1,456	13,594 (13,235)
231	Northland Bowl	Tulsa, Oklahoma	32	(33,110)	(14,150) (44,594)	(40,687) (70,975)	2,377 *	-	-	-	-
232	Vestavia Lanes	Birmingham, Alabama	40	(22,540)	(47,012) (90,798)	-	-	-	-	-	-
233	Coronado Lanes	Oklahoma City, Oklahoma	24	(8,268)	(14,046) (33,720)	(10,444) (29,469)	(15,083) (33,801)	5,643 (12,773)	34,458 12,100	36,450 11,832	26,609 5,316
234	Bruns. Center Ridge Lanes	N. Ridgeville, Ohio	34	(2,364)	(20,579) (49,556)	17,926 (11,049)	22,496 (5,432)	24,262 (3,575)	35,724 7,695	82,431 55,473	127,299 97,719
236	Tri Mor Bowl	Granite City, Illinois	32	(20,339)	(17,296) (46,011)	(12,300) (40,661)	853 (26,565)	23,317 (2,966)	1,444 (29,039)	22,684 (12,480)	30,787 (4,364)
237	Freeway Lanes	Providence, Rhode Island	44	(28,748)	(32,921) (73,672)	(15,445) (64,865)	(6,580) - *	-	-	-	-
238	Bowlero Bowl	Lemon Grove, California	40	(70,219)	(34,466) (54,319)	(48,566) (69,419)	(63,898) (82,342)	(12,685) (48,292)	(90) (32,663)	28,753 (267)	28,499 2,803
239	Portland Lanes	Portland, Indiana	16	(11,296)	(14,082) (27,908)	(5,176) (22,588)	(351) -*	-	-	-	-
240	Sunbowl	Portland, Oregon	24	(15,876)	(18,732) (46,442)	(26,964) (49,621)	(20,851) (42,875)	(16,515) (38,141)	(14,896) (36,768)	(5,517) (27,963)	(408) (28,176)
241	Bowladrome	Twin Falls, Idaho	24	(9,247)	10,537 (10,719)	336 (14,920)	9,700 (5,228)	4,550 (15,221)	27,135 (1,728)	11,183 (16,467)	3,522 *
242	Bruns. Sunset Lanes	Beaverton, Oregon	36	(16,954)	(12,883) (44,858)	(24,320) (55,937)	17,012 (13,460)	48,980 18,983	82,098 51,748	96,667 70,502	100,366 74,867
243	Bruns. Santa Paula Lanes	Santa Paula, California	20	(19,723)	(42,989) (60,898)	(35,808) (52,858)	(50,375) (66,953)	(65,339) (81,822)	(37,141) *	--	--

ANALYSIS OF PROFIT OR (LOSS) OF BOWLCENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
244	Bruns. Roxy Alleys	New York, New York	22	(19,054)	(7,146) (24,356)	(53,801) (70,351)	(13,354) (28,550)	(1,114) (15,714)	(39,614) (54,586)	(54,550) (71,602)	(167,584) *
245	Bruns. Center Lanes	Newton, Iowa	16	(4,754)	(3,398) (17,782)	(643) (14,017)	12,793 4,466	10,435 (585)	15,880 627	11,002 (6,421)	1,440 (15,948)
246	Bruns. Granada Lanes	Granada Hills, California	48	(14,904)	8,938 (32,057)	(59,447) (100,295)	(18,101) (58,248)	17,179 (21,888)	18,436 (20,840)	66,549 24,353	122,304 72,131
247	Bruns. Tri-City Bowl	Sheffield, Alabama	30	(31,230)	(14,732) (45,827)	(662) -*	-- --	-- --	-- --	--- --	-- --
248	Bruns. Shoreway Lanes	Sheffield Lake, Ohio	24	(3,104)	12,152 (10,340)	25,583 3,191	40,579 18,528	44,500 22,866	39,851 18,272	51,505 33,456	68,608 49,634
249	Paris Lanes	Paris, Texas	16	(20,885)	(10,014) (23,360)	(12,550) (25,076)	(7,902) (20,151)	84 (11,303)	13,329 (1,029)	31,399 13,736	13,405 (4,405)
250	Ramona Lanes	Jacksonville, Florida	32	(17,192)	(14,286) (43,636)	(12,178) (40,020)	(19,941) (45,672)	(7,124) (32,283)	1,772 (23,327)	10,337 (11,576)	27,753 1,201
251	Lenox Lanes	Atlanta, Georgia	18	(10,572)	(6,260) (21,992)	4,719 (10,672)	(3,691) (18,762)	(9,805) (26,455)	10,256 (9,897)	(10,805) (29,527)	25,018 6,617
252	Bourbon Bowl	Paris, Kentucky	16	2,152	7,236 (7,507)	(393) (14,865)	3,336 (11,126)	11,848 (2,398)	15,635 1,625	3,890 (8,403)	15,616 (306)
253	Magnolia Lanes	Arlington, California	32	(25,860)	(11,510) (35,003)	(21,234) (36,973)	(1,363) (19,810)	25,396 (3,905)	23,391 (9,615)	24,639 (3,701)	53,760 27,402
254	Olympic Center	Middletown, Kentucky	32	(22,613)	(22,256) (51,944)	(26,719) (56,238)	(682) *	-- --	-- --	-- --	-- --
255	Bowl-A-Rama	Muskogee, Oklahoma	20	(17,987)	(9,588) (25,516)	(22,422) (38,210)	(34,589) (50,022)	(29,233) (49,654)	(17,064) *	-- --	-- --
256	Plaza Lanes	St. Charles, Missouri	24	(9,205)	(2,598) (24,006)	4,104 (16,322)	20,723 1,332	34,149 11,828	40,635 11,205	44,734 18,756	7,477 (13,259)
257	Pimingo Lanes	Goody, Kentucky	20	(4,931)	(6,585) (25,266)	(13,287) (37,753)	(690) *	-- --	-- --	-- --	-- --

ANALYSIS OF PROFIT OR (LOSS) OF BOWL CENTERS

A1706
Exhibit P47

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
258	Amity Bowling Center	Woodbridge, Connecticut	24	(7,409)	(5,726) (25,859)	692 (19,214)	19,170 (816)	22,674 3,298	42,408 -18,992	60,381 32,587	40,219 15,534
259	Twin City Lanes	Council Bluffs, Iowa	16	(17,822)	(15,888) (27,711)	(8,714) (17,599)	(8,792) (19,964)	7,756 (1,435)	11,345 (6,229)	9,347 (7,778)	23,700 6,209
260	Gamecock Lanes	Sumpter,, South Carolina	24	(5,120)	22,534 (375)	3,202 (19,543)	3,609 (18,966)	9,880 (12,184)	17,539 (4,477)	42,444 22,116	34,812 6,940
261	Charger Lanes	Barberton, Ohio	32	(4,819)	24,435 138	48,198 24,374	38,941 15,718	26,483 3,763	47,851 24,840	56,789 38,078	38,846 21,185
262	College Plaza	Alliance, Ohio	32	(448)	(7,798) (33,958)	(32,498) (58,511)	(28,116) (53,570)	(25,413) (50,308)	8,552 (16,584)	17,025 (4,753)	51,596 25,986
263	Mt. Vernon Lanes	Mt. Vernon, Ohio	24	261	32,439 16,274	3,788 (11,332)	4,001 (10,877)	6,425 (8,064)	1,392 (13,625)	(2,717) (15,834)	(2,320) (15,697)
264	Americana Lanes	Ozone Park, New York	64	14,964	8,004 (48,972)	67,393 15,440	54,414 4,968	45,171 (7,032)	134,212 60,705	181,357 115,352	117,405 57,779
265	Roosevelt Lanes	Roosevelt, New York	40	537	(42,334) (85,183)	(48,315) (83,889)	(36,549) (78,390)	(24,034) *	--	--	--
266	Willow Lanes	McCook, Nebraska	16	(4,386)	(14,361) (32,005)	-- - --	-- --	-- --	-- --	-- --	-- --
267	Alameda Lanes	Denver, Colorado	16	(3,560)	(18,312) (30,458)	(11,405) (26,630)	(2,869) *	-- --	-- --	-- --	-- --
268	Lakeland Lanes	Lakeland, Florida	24	(24,882)	51,679 35,428	31,107 29,265	32,102 29,438	45,603 42,993	34,102 31,137	65,702 65,111	77,480 77,792
269	Capital Bowling Center	Austin, Texas	32	(6,860)	(16,777) (44,184)	(15,600) (42,315)	25,596 119	24,693 461	30,346 6,868	29,148 9,529	37,329 17,475
270	South Park Lanes	S. Milwaukee, Wisconsin	32	(1,596)	(32,080) (69,659)	(13,713) (51,999)	(7,218) (33,945)	(3,491) (29,733)	9,749 (16,728)	(14,255) (36,332)	44,695 28,502
271	Elitch Lanes	Denver, Colorado	24	1,769	(17,373) (44,016)	(15,588) (38,242)	191 (20,570)	23,059 8,344	48,386 34,309	65,732 53,566	64,077 51,802

A1707
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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
272	Hilldale Bowl	Madison, Wisconsin	48	9,336	(42,365) (83,379)	(43,692) (84,086)	(49,301) (88,566)	(45,916) *	-- --	-- --	-- --
273	Euclid Green Lanes	Cleveland, Ohio	32	509	(25,219) (52,127)	(38,983) (65,440)	(32,141) (57,688)	(26,866) (54,247)	(36,163) (64,389)	(35,765) (65,657)	(10,878) (48,590)
274	Austin Highway Bowling Center	San Antonio, Texas	24	(17,073)	(35,500) (56,176)	(14,164) (30,599)	11,692 (607)	(18,216) (33,732)	5,952 (15,776)	8,953 *	-- --
275	Red Fox Lanes	Long Beach, California	32	(1,485)	14,338 (8,871)	469 (21,559)	(20,575) (41,856)	(4,883) (25,175)	12,813 (9,165)	24,674 2,637	42,606 20,135
276	Ball & Pin Lanes	Lombard, Illinois	24	(12,506)	(8,806) (27,790)	36,741 20,405	52,881 35,219	58,136 33,931	75,051 49,269	87,829 64,385	29,694 17,733
277	Starlite Lanes	Knoxville, Tennessee	24	(1,495)	1,329 (18,427)	(15,971) (35,196)	11,588 (6,554)	17,234 (3,937)	31,966 2,292	23,978 (3,428)	33,353 6,648
278	Pel Park Lanes	Bronx, New York	31	6,069	34,341 3,245	22,961 (5,373)	21,227 (6,333)	154 (27,533)	26,476 (1, 193)	50,557 17,114	65,368 32,138
279	Carriage House Lanes	Minneapolis Minnesota	32	2,776	10,148 (18,032)	16,897 (10,993)	10,820 (15,164)	(12,894) (37,472)	24,885 (292)	56,989 34,535	63,901 41,638
280	Skylark Bowl	Petersburg, Virginia	16	(12,112)	(8,324) (27,044)	-- --	-- --	-- --	-- --	-- --	-- --
281	Wescal Lanes	Sulpher, La.	16	(12,873)	(17,417) (32,116)	(23,215) (37,662)	(4,053) *	-- --	-- --	-- --	-- --
282	Coastal Bend Lanes	Aransas Pass, Texas	16	(1,462)	(11,842) (26,700)	(11,237) (25,467)	(4,235) (18,150)	(10,512) (24,403)	687 (13,191)	(6,755) (20,771)	2,683 (15,887)
283	Sun Valley Lanes	Boswell, Georgia	16	(6,421)	(26,641) (41,690)	(14,063) (35,567)	(155) *	-- --	-- --	-- --	-- --
284	Hoffman Heights Bowl	Aurora, Colorado	24	(137)	(40,940) (61,032)	(33,250) (52,616)	(29,894) (49,397)	(18,158) (36,648)	(12,898) (31,389)	13,138 (2,764)	30,038 14,412
285	Rubidoux Bowl	Riverside, California	24	(8,519)	(20,785) (42,388)	(15,789) (42,106)	75 *	-- --	-- --	-- --	-- --

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
286	Harcoal Lanes	Harlan, Kentucky	17	(8,939)	(23,712) (42,078)	(12,477) *	--	--	--	--	--
287	Wise County Bowling Center	Wise, Virginia	20	(290)	(12,274) (31,061)	(4,131) *	--	--	--	--	--
288	St. Albans Bowl	St. Albans, New York	29	173	(45,583) (78,716)	(29,314) --*	--	--	--	--	--
289	Cochise Bowl	Douglas, Arizona	16	(4,006)	4,788 (12,942)	-- --	--	--	--	--	--
290	Village Lanes	Chicago, Illinois	16	1,168	(2,111) (16,804)	(1,603) (15,947)	14,604 1,033	(3,617) (16,641)	(4,078) (17,684)	35,103 22,932	20,954 6,761
291	Deland Lanes	Deland, Florida	24	(205)	(17,676) (40,360)	(5,244) (27,341)	(12,121) (34,259)	(3,032) (24,781)	236 (21,527)	463 (19,942)	5,878 (21,800)
292	Hurricane Bowl	Marion, Virginia	16	580	(7,480) (22,288)	431 (14,257)	(1,699) (16,290)	26 (14,700)	(3,040) (17,734)	5,847 (7,169)	12,120 (544)
293	Bruns. Friendly Lanes	Greensboro, North Carolina	40	1,498	(12,012) (48,051)	(2,477) (38,017)	(5,994) (40,548)	(5,616) (41,645)	32,204 (18,236)	119,263 74,214	144,626 103,683
294	College Village Lanes	High Point, North Carolina	32	184	(32,003) (66,209)	-- --	--	--	--	--	--
295	Bruns. Shelby Lanes	Shelby, North Carolina	24	(110)	(23,742) (45,368)	(11,949) *	--	--	--	--	--
296	Bowlerland Lanes	Van Nuys, California	32	(23,063)	(17,726) (45,345)	(21,929) (50,369)	(21,903) (48,260)	(26,062) (51,833)	(5,767) (31,905)	28,289 5,090	45,069 13,486
297	Sanger Lanes	Sanger, California	16	(68)	(33,602) (48,929)	(10,136) *	--	--	--	--	--
298	Dutchess Lanes	Poughkeepsie, New York	26	(5,192)	(30,755) (54,784)	(28,776) (52,168)	(23,279) (46,630)	--	--	--	--
299	Cabrillo Lanes	Watsonville, California	24	3,151	14,668 (10,694)	-- --	--	--	--	--	--

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
300	Applewood Lanes	Golden, Colorado	16	(4,507)	(38,848) (53,505)	(12,609) (26,610)	(16,945) (30,829)	(8,096) (21,650)	1,091 (12,169)	15,215 3,648	24,893 7,273
301	Broadmoor Bowl	Denver, Colorado	32	2,164	9,421 (20,810)	(4,349) (29,778)	30,538 6,897	(8,951) (30,008)	24,609 3,353	57,442 39,681	60,728 37,147
302	Bruns. Rossmoor Bowling Center	Los Alamitos, California	40		(5,168) (43,825)	18,949 (16,883)	(377) (35,656)	29,831 (4,827)	72,325 37,711	135,905 118,842	98,614 88,472
303	Bruns. Bowlerland	Ft. Worth, Texas	32		(49,691) (79,364)	(22,937) (50,289)	10,360 (16,915)	28,246 1,441	34,426 8,218	37,047 14,415	33,098 11,103
304	Matador Bowl	Northbridge, California	24		2,178 (24,542)	(17,599) (35,695)	(19,599) (37,115)	(34,180) (51,329)	(16,777) (39,171)	31,683 9,375	49,383 32,002
305	Bruns. Olive Ave. Bowl	Porterville, California	16		17,043 1,391	6,833 (7,495)	4,213 (10,017)	(5,379) (19,463)	3,011 (10,499)	(2,667) (13,740)	(2,789) (13,804)
306	Palmetto Lanes	Rock Hill, South Carolina	32		(20,716) (52,506)	(21,262) (51,991)	-- --	-- --	-- --	-- --	-- --
306	Palmetto Lanes	Rock Hill, South Carolina	24		-- --	-- --	(12,114) (33,476)	(25,775) (46,729)	(6,184) (34,048)	15,346 (10,136)	24,831 (2,972)
307	Woodhaven Lanes	Glendale, New York	60		(55,048) (109,801)	36,960 (5,298)	-- --	-- --	-- --	-- --	121,487 71,779
307	Woodhaven Lanes	Glendale, New York	52		-- --	-- --	12,190 (18,881)	17,342 (18,575)	83,751 38,304	120,099 82,589	-- --
308	Bruns. Cypress Lanes	Winter Haven, Florida	16		25,899 9,338	27,735 13,676	20,839 7,799	28,394 15,347	30,511 17,041	35,783 19,682	33,618 16,546
309	Bruns. Colony Bowl	Brooklyn, New York	48		(17,224) (62,213)	12,436 (23,065)	(30,996) (70,262)	(66,972) *	-- --	-- --	-- --
310	King of Prussia	King of Prussia, Pennsylvania	32		(42,205) (68,481)	(61,710) (80,292)	(22,572) (55,370)	(4,035 (41,480)	3,881 (35,547)	45,270 7,953	27,806 (7,977)
311	Bruns. Royal Lanes	W. Hempstead, L.I., N.Y.	48		(22,806) (76,542)	(5,211) (47,947)	(16,902) (58,162)	905 (40,169)	(18,470) (59,649)	(7,973) (43,539)	8,953 (37,085)

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
312	Bloomfield Bowl-O-Mat	Bloomfield, New Jersey	40		(27,295) * -	(17,447) (52,439)	(9,994) (44,309)	5,745 (28,529)	22,584 (11,253)	5,776 (27,157)	33,601 (6,641)
313	Ronnell Bowl	Sylmar, California	32		(25,219) * -	(34,819) (61,195)	(53,205) (76,895)	(36,309) (59,550)	(56,541) (79,599)	(17,186) (46,818)	-- --
314	Bruns. King Pin Lanes	Garfield Heights, Ohio	32		13,030 *	191 (23,132)	(5,707) (28,694)	(11,948) (34,922)	5,142 (18,729)	14,979 (9,541)	27,509 (3,857)
315	Suburban Lanes	Decatur, Georgia	32		(2,990) *	9,960 (15,238)	(600) (25,300)	12,624 (12,283)	34,204 (345)	50,578 20,893	73,121 47,780
316	Bruns. Freedom Lanes	Charlotte, North Carolina	32		269 *	13,618 (17,211)	20,233 (9,761)	45,060 15,440	38,833 8,906	64,383 28, 646	62,418 26,621
317	Bruns. Holiday Lanes	LaCorsse, Wisconsin	40		(75,989) *	(30,712) (70,268)	(3,506) *	-- --	-- --	-- --	-- --
318	J. Town Lanes	JeffersonTown, Kentucky	24		(7,011) *	1,673 (21,025)	21,136 (995)	14,790 (6,746)	21,826 126	52,958 25,763	60,513 34,227
319	Bruns. Mil Sher Lanes	Tonawanda, New York	36		(12,683) *	26,883 (5,085)	23,333 (6,292)	18,373 (11,274)	36,843 2,889	51,277 7,611	61,603 20,604
320	Bruns. Briar Hill Lanes	Briar Cliff Manor, New York	24		(10,674) *	13,532 (8,962)	(7,997) (29,806)	(24,081) (45,343)	(8,553) (29,587)	(43,104) (63,707)	(28,706) (46,867)
322	Bruns. Monmouth Lanes	Long Branch, New Jersey	32		(6,178) *	(3,229) (33,786)	27,974 (1,970)	29,040 (1,156)	29,613 (548)	37,321 3,507	6,474 (30,624)
323	Bruns Airport Plaza Lanes	Hazlet, New Jersey	32		(19,196) *	17,208 (13,359)	33,662 3,854	69,045 39,059	64,092 34,132	91,029 57,145	85,912 54,281
324	Bruns. E. Port Bowl	Elizabeth, New Jersey	32		(15,608) *	(28,042) (58,984)	7,125 *	-- --	-- --	-- --	-- --
325	Bruns. Lincoln Lanes	Merril, Wisconsin	16		(9,019) *	(5,793) (21,107)	(8,463) (23,528)	6,575 *	-- --	-- --	-- --
326	Holiday Lanes	Johnson City, Tennessee	24		(536) *	8,652 (14,354)	2,616 (20,076)	8,708 (13,560)	18,704 (4,747)	48,511 21,300	69,627 42,064

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
327	Bruns. Belmont Bowl	Smyrnia, Georgia	24		1,437 *	26,944 9,385	28,404 10,988	43,138 21,344	40,485 11,469	42,406 13,419	52,612 27,870
329	Bruns. Fiesta Lanes	Lubbock, Texas	24		(13,128) *	(18,590) (40,170)	(11,027) (32,179)	(8,875) (29,980)	(22,241) (47,106)	(22,298) (53,663)	- -
330	Escondido Bowl	Escondido, California	24		(20,202) *	(51,043) (69,969)	(55,942) (73,935)	(59,240) (81,236)	(29,229) (58,842)	(9,947) (40,220)	13,227 (14,769)
331	Bruns. Olumpia Bowl	Belleville, New Jersey	32		(14,944) *	(52,687) (79,073)	(22,948) (46,805)	45,528 18,500	68,468 30,026	72,154 33,535	76,287 50,181
332	Town & Country Lanes	Midvale, Utah	18		(13,471) *	(15,376) (31,656)	(15,744) (32,407)	(10,320) (26,931)	(6,239) (22,714)	(3,426) (23,127)	1,911 (19,475)
333	Bruns. Plaza Bowl	Virginia Beach, Virginia	40		10,269 *	21,971 (13,262)	22,473 (12,849)	58,736 25,686	79,388 41,040	101,718 55,413	89,731 52,123
334	Bruns. Rainbow Lanes	Brooklyn, New York	56		(2,219) *	64,215 10,555	79,110 27,265	71,111 18,071	59,537 2,218	94,894 34,134	88,334 33,206
335	Holiday Bowl	Groves, Texas	32		(7,908) *	6,835 (21,819	(114) (27,314)	(14,224) (40,929)	2,182 (29,484)	34,045 (5,888)	14,373 (22,403)
336	Sterling Village Lanes	Reno, Nevada	20		(8,864) *	(13,585) (29,303)	(4,132) (19,441)	5,682 (9,486)	34,420 19,145	54,360 38,974	53,678 47,666
337	Bruns. Bowlero	Tulsa, Oklahoma	24		(4,354) *	(26,170) (49,328)	(10,398) (32,903)	(6,477) (28,696)	(7,361) (29,278)	(783) (24,850)	(14,598) (41,277)
338	Bruns. Cherokee Bowl	Independence, Kentucky	16		(247) *	1,786 (13,055)	(8,848) (23,268)	(5,089) (19,031)	9,010 (4,711)	22,104 8,318	27,829 15,638
339	Wonder Bowl	Downey, California	64		(43,527) *	(107,831) (159,616)	(152,643) (209,632)	(83,941) (140,558)	(22,196) (100,511)	40,972 (38,603)	82,442 10,664
340	Bruns. Hixon Lanes	Hixon, Tennessee	32		(7,762) *	(41,953) (72,932)	(15,606) (45,890)	(6,585) (36,447)	1,647 (28,162)	22,158 (11,882)	29,628 (6,427)
341	Bowlhaven Lanes	White Haven, Tennessee	36		12,398 *	37,967 4,678	51,334 19,125	54,285 21,134	78,565 44,020	84,993 50,311	88,999 59,945

ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
342	Bruns. Shorecrest Bowl	Racine, Wisconsin	24		(9,347) *	(10,806) (31,314)	(8,263) (26,732)	(7,341) (26,177)	10,623 (8,809)	17,894 (5,742)	21,975 (3,903)
343	Surf Bowl	Santa Cruz, California	26		5,165 *--	(18,079) (36,862)	(15,423) (32,771)	(38,250) (59,885)	(9,309) (35,941)	3,265 (26,933)	9,958 (18,113)
344	Bruns. Rose Bowl	Buffalo Grove, Illinois	24		10,215 * --	(39,449) (62,229)	16,368 (4,888)	31,132 10,764	45,354 25,647	4,480 (19,818)	-- --
345	Carteret Lanes	Carteret, New Jersey	32		364 * --	(34,316) (63,176)	(15,817) (42,922)	25,359 (1,084)	4,923 (28,317)	(12,665) (51,706)	(377) (34,545)
346	Bruns. Keglers	Morgan City, Louisiana	24		(4,992) *--	(37,168) (57,626)	(12,412) (31,998)	(21,596) (41,047)	4,190 (15,408)	(6,955) (27,990)	(4,825) (31,204)
347	Thunderbird Lanes	Boulder, Colorado	24		3,733 * --	12,963 (9,361)	2,288 (19,587)	11,526 (10,111)	25,465 3,888	61,400 38,918	62,580 38,547
348	Hollywood Legion Lanes	Hollywood, California	44		10,815 * --	2,761 (34,643)	(1,442) (28,379)	3,023 (23,727)	17,658 (10,836)	45,539 (10,796)	38,175 (12,606)
349	Bruns. Wonderbowl	Anaheim, California	48		3,925 *	(39,045) (77,779)	8,908 (27,980)	69,831 33,208	126,828 67,357	174,371 118,659	141,431 94,659
350	Bruns. Delta Bowl	Antoich, California	24			(16,906) (39,637)	(16,171) (36,283)	(10,634) (30,346)	4,131 (15,863)	32,158 17,246	41,832 22,800
351	Bruns. Baldwin Park Bowl	Baldwin, California	32			(46,891) (75,781)	(84,752) (101,307)	(38,446) *	-- --	-- --	-- --
352	Town & Country Lanes	Pomona, California	32		--	(72,350) *	-- --	-- --	-- --	-- --	-- --
353	Coral Carlin Bowl	Stuart, Florida			--	(6,665) *	-- --	-- --	-- --	-- --	-- --
354	Santa Fe Lanes	Wittier, California	32			(33,277) (66,178)	(76,175) (99,189)	14,937 (16,776)	41,001 531	41,881 4,663	7,875 (23,775)
355	Royal Oaks Lanes	Duarte, California	24			(22,477) (50,334)	(66,137) (85,273)	(55,725) (75,207)	(57,791) (77,336)	(25,846) (50,092)	-- --

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
356	Stardust Lanes	Delano, California	16			(30,907) (50,513)	(1,087) *	--	--	--	--
357	Hillcrest Lanes	Sedalia, Missouri	16			(11,215) *	7,623 *	--	--	--	--
358	Murray's 51 Bowl	Belle Vernon, Pennsylvania	36			(11,988) *	(35,687) (69,499)	(47,374) (80,312)	(280) (33,520)	932 (37,020)	(2,344) (47,841)
359	Bruns. CamdenLanes	Camden, New Jersey	64			(989) *	29,470 (32,322)	8,478 (51,610)	24,458 (34,565)	55,577 (2,069)	55,360 (9,235)
360	Bruns. CreoleLanes	Vincennes, Indiana	16			2,926 *	3,826 (10,820)	5,955 (8,516)	(8,044) (22,490)	2,640 (11,714)	5,047 (9,093)
361	Medallion Lanes	Maitland, Florida	24			(5,210) *	(21,673) (45,097)	1,229 (21,768)	23,760 1,337	57,206 33,459	69,477 39,594
362	Bruns. Banning Bowl	Banning, California	16			(10,049) *	(41,866) (53,089)	(34,485) (48,205)	(1,240) *	-- --	-- --
363	Bruns. Chalet Bowl	Crystal, Minnesota	24			2,032 *--	(14,957) (38,060)	(61) (22,372)	21,493 (667)	19,084 (4,345)	5,686 (24,337)
364	Lane Park Lanes	Sacramento, California	32			(26) *	4,526 (22,704)	49,175 23,119	23,626 (2,133)	62,677 26,969	63,822 38,479
365	East End Bowl	New York, New York	32				(4,731) (30,591)	24,243 9,347	63,476 33,962	94,425 57,760	80,696 46,447
366	College Lanes	New Platz, New York	24				4,585 *	9,738 (13,068)	2,384 (20,357)	24,674 5,586	16,446 646
367	Guys & Dolls Lane	Pittsburg, Pennsylvania	32				(23,422) *	2,610 (18,054)	(7,453) (22,066)	-- --	-- --
367	Guys & Dolls Lanes	Pittsburg, Pennsylvania	36				-- --	-- --	-- --	21,364 1,791	33,560 8,872
368	Holiday Lanes	Denton, Texas	20				(6,097) *	2,225 (14,486)	11,674 (9,299)	38,127 13,527	38,411 13,541

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ANALYSIS OF PROFIT OR (LOSS) OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
369	Monroe Lanes	Covington, Virginia	16				(12,782) * -	(8,648) (23,134)	(8,001) (23,511)	1,004 (14,548)	(8,604) (24,156)
370	Coliseum Lanes	Charlotte, North Carolina	40				(16,901) * -	22,675 (17,677)	67,631 15,818	88,848 38,424	102,923 53,917
371	Bruns. Holiday Bowl	Lawton, Ohio	24				(10,666) * -	(25,358) (44,842)	(9,797) (28,675)	26,980 7,063	35,201 6,453
372	Bruns. Classic Lanes	Athens, Tennessee	16				(432) * -	(1,516) (16,386)	(8,396) (23,200)	1,191 (13,650)	(1,365) (18,334)
373	B. Camarillo Lanes	Camarillo, California	20				(15,690) * -	(54,368) (72,855)	(38,485) (56,799)	(12,406) (28,132)	(5,734) (20,910)
374	Bruns. Edison Bowl-O-Mat	Edison, New Jersey	40					(11,479) *-	25,305 (7,374)	62,344 14,915	57,151 7,411
375	Cocoa Bowl-O-Rama	Cocoa, Florida	24					(20,055) *-	8,180 (13,327)	(4,970) (26,390)	4,856 (15,966)
376	Western Bowl	Chicago Hgts. Illinois	24					(9,305) *-	85,159 102,175	98,621 114,121	99,980 112,884
377	Street Lanes	Feasterville, Pennsylvania	32					(25,885) *- -	33,509 3,561	44,642 16,329	36,496 11,141
378	El Cajon Bowl	El Cajon, California	24					(64,381) *	(35,252) (65,848)	9,236 (20,984)	(2,424) (31,858)
379	Iceland Bowl Bruns. Main Cor.	Albuquerque, New Mexico	32					(13,673) *	(33,302) (75,347)	(19,976) *	- -
380	Playmor Bowl	Pittsburg, Pennsylvania	32					(24,782) *	(522) (26,382)	(8,120) (36,863)	3,145 (32,799)
381	Tenpin on the Mall	Paramus, New Jersey	36					(2,564) *-	(8,131) (42,540)	6,945 (27,106)	(2,036) (40,012)
382	Parkwood Lanes	Orlando, Florida	32					(27,615) *-	(25,663) (51,784)	43,920 3,534	21,236 (18,075)

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
383	Sands Bowl	Lancaster, California	32					(23,294)	(3,745)	13,666	35,965
								*	(28,738)	(21,827)	1,740
385	Northern Bowl	Glendale Hgts., Illinois	32						341	56,924	(4,368)
									*	123,959	56,162
386	Wayne Rec. Center	Ft. Wayne, Indiana	32						(53,170)	13,363	3,288
									*	74,352	57,630
387	Mountain Lanes	Wausau, Wisconsin	24						(27,182)	(16,947)	10,214
									*	(47,240)	(19,651)
388	Janes Lanes	Marshfield, Wisconsin	24						(22,330)	1,359	(24,782)
									*	(29,066)	(51,625)
389	Lodi Lanes	Lodi, New Jersey	40						(27,013)	5,030	(46,499)
									*	(47,670)	(98,477)
391	Rahway Recreation	Rahway, New Jersey	24						2,576	22,007	6,675
									*	(7,680)	(21,549)
392	Brunswick Lakeshore	Gainsville, Georgia	24						3,657	965	(6,089)
									*	(23,137)	(29,069)
393	Carollton Bowl	Bridgeton, Missouri	24							914	11,001
										*	54,554
394	Bruns Orange Bowl	Orange, California	32							75,023	60,900
										*	83,661
395	Sharpstown Bowl	Sharpstown, Texas	32							(11,170)	139,627
										*	148,710
396	Ottumwa Lanes	Ottumwa, Iowa	24							(32,696)	(29,474)
										*	(48,553)
397	Gladstone Bowl	Gladstone, Missouri	24							32,539	65,529
										*	38,027
398	Harris Hill Lanes	Buffalo, New York	24							--	-
											-

ANALYSIS OF PROFIT OR (LOSS)OF BCOD CENTERS

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
151	Olympic Bowl	Rochester,	72	-	-	-	-	-	-	-	153,302
		New York	8 other	-	-	-	-	-	-	-	*
152	Fairview Lanes	Fairport,	24	-	-	-	-	-	-	-	36,556
		New York		-	-	-	-	-	-	-	*
153	Ithaca Bowl	Ithaca,	24	-	-	-	-	-	-	-	24,975
		New York		-	-	-	-	-	-	-	*
154	Watertown Bowl	[illegible]ertown,	48	-	-	-	-	-	-	-	76,268
		[illegible] York		-	-	-	-	-	-	-	*
155	Corning Bowl	Corning,	32	-	-	-	-	-	-	-	92
		New York		-	-	-	-	-	-	-	*
156	Oswego Pinerama	Oswego,	32	-	-	-	-	-	-	-	34,173
		New York		-	-	-	-	-	-	-	*
157	Coral Lanes	Olean,	24	-	-	-	-	-	-	-	18,680
		New York		-	-	-	-	-	-	-	*
158	Fulton Bowlerama	Fulton,	24	-	-	-	-	-	-	-	16,570
		New York		-	-	-	-	-	-	-	*
159	Seaway Lanes	Massena,	24	-	-	-	-	-	-	-	17,726
		New York		-	-	-	-	-	-	-	*
160	Holiday Bowl	Syracuse,	48	-	-	-	-	-	-	-	49,432
		New York		-	-	-	-	-	-	-	*

ANALYSIS OF CASH FLOW FOR BLUE HEN LANES

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
102	Interstate Lanes	Ramsey, New Jersey	40	(14,968)	40,269 80,000	63,339 80,000	78,548 80,000	81,560 80,000	98,498 80,000	153,477 47,080	138,796 47,080
103	Fairlawn Lanes	Fairlawn, New Jersey	32	25,996	58,216 64,000	69,116 64,000	61,672 64,000	76,564 64,000	100,289 64,000	106,170 37,664	95,311 37,664
104	Lancaster Lanes	Lancaster, Pennsylvania	32	14,034	48,822 64,000	45,028 64,000	44,916 64,000	27,771 64,000	42,793 64,000	41,121 37,664	43,097 37,664
105	Plaza Lanes	Natrona Hgts., Pennsylvania	32	(7,267)	3,153 64,000	4,116 64,000	5,950 64,000	10,075 64,000	22,187 64,000	64,033 37,664	48,033 37,664
106	Parkade Lanes	Manchester, Connecticut	32	(6,161)	35,082 64,000	38,202 64,000	36,617 64,000	34,762 64,000	42,789 64,000	56,729 37,664	59,041 37,664
107	Plaza Lanes	Haverhill, Massachusetts	20TP 12CP	(51,168)	(44,333) 40,000	(43,560) 40,000	(13,592) -	- -	- -	- -	- -
108	Sunset Lanes	No. Babylon, L.I., N.Y.	32	(5,203)	50,145 64,000	38,474 64,000	29,012 64,000	42,783 64,000	56,143 64,000	86,767 37,664	116,486 37,664
109	Town & Country Lanes	Bethlehem, Pennsylvania	24	(13,462)	8,777 48,000	(4,600) 48,000	12,310 48,000	13,446 48,000	37,419 48,000	40,203 28,248	42,595 28,248
110	Parkway Lanes	Bronx, New York	44	(17,775)	45,774 88,000	71,361 88,000	90,112 88,000	86,637 88,000	51,838 88,000	52,077 51,788	102,534 51,788
112	Foxfield Lanes	Foxboro, Massachusetts	16TP 8DP	(34,867)	(30,738) 32,000	(24,928) 32,000	(21,984) -	- -	- -	- -	- -
115	Colony Lanes	Wallingford, Connecticut	32	(14,512)	25,748 64,000	24,383 64,000	16,632 64,000	7,505 64,000	32,517 64,000	47,796 37,664	50,180 37,664
118	Bowl-A-Way Lanes	Burlington, Massachusetts	24TP 16CP	(31,282)	9,886 48,000	19,229 48,000	44,862 48,000	40,188 48,000	38,164 48,000	49,030 28,248	45,367 28,248
119	Airway Lanes	Springfield, Massachusetts	32TP 16CP	(57,476)	10,965 64,000	14,445 64,000	33,901 64,000	42,005 64,000	10,716 64,000	9,740 37,664	(9,999) 37,664
120	Blue Hen Lanes	Newark, Delaware	32	(6,136)	8,998 64,000	29,023 64,000	38,460 64,000	20,075 64,000	44,930 64,000	51,989 37,664	78,195 37,664

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CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
122	Yonkers Bowl	Yonkers, New York	52	30,531	82,512 104,000	107,043 104,000	128,576 104,000	123,053 104,000	97,338 104,000	67,584 61,204	121,144 61,204
126	Stadium Lanes	Plainville, Connecticut	32	(18,737)	10,285 64,000	1,776 64,000	(9,069) 64,000	(20,501) 64,000	14,705 64,000	30,240 37,664	47,466 37,664
127	New City Bowl	New City, New York	24	20,412	62,787 48,000	71,108 48,000	59,133 48,000	68,496 48,000	65,142 48,000	72,746 28,248	86,795 28,248
128	Normandy Lanes	Ellicott City, Maryland	32	(11,279)	35,876 64,000	15,598 64,000	36,493 64,000	49,400 64,000	54,894 64,000	89,048 37,664	114,212 37,664
129	Maple Lanes	Marlboro, Massachusetts	20TP 12CP	(34,759)	(23,384) 40,000	(7,377) 40,000	6,786 40,000	4,033 40,000	15,282 40,000	8,093 23,540	(34,355) 23,540
130	Walnut Hill Bowl	Woonsocket, Rhode Island	32	(14,420)	21,799 64,000	31,194 64,000	40,583 64,000	23,730 64,000	(20,357) 64,000	(20,783) 37,664	23,738 37,664
133	River Bowl Lanes	Bethesda, Maryland	48	17,636	120,523 96,000	128,915 96,000	130,458 96,000	136,997 96,000	142,051 96,000	189,028 56,496	168,266 56,496
135	Perry Hall Lanes	Baltimore, Maryland	48	(8,347)	29,119 96,000	46,114 96,000	61,229 96,000	74,583 96,000	69,288 96,000	96,727 56,496	89,453 56,496
137	Valley Lanes	Jefferson Valley, New York	24	(12,894)	19,627 48,000	20,700 48,000	33,950 48,000	42,777 48,000	43,062 48,000	73,051 28,248	65,826 28,248
138	Crown Lanes	Baltimore, Maryland	40	(36,628)	(55,136) 80,000	(43,034) 80,000	(34,783) 80,000	(33,535) 80,000	(6,194) 80,000	10,036 47,080	24,772 47,080
139	Bayside Lanes	Bayside, New York	48	2,680	65,189 96,000	75,986 96,000	94,607 96,000	70,753 96,000	103,099 96,000	85,947 56,496	107,433 56,496
141	Arrow Lanes	Buffalo, New York	48	(23,352)	1,226 96,000	3,154 96,000	22,010 96,000	39,761 96,000	42,190 96,000	63,588 56,496	- -
141	Arrow Lanes	Buffalo, New York	56	- -	- -	- -	- -	- -	- -	- -	57,772 72,496
200	Lincoln Lanes	Worchester, Massachusetts	56	(13,641)	10,461 112,000	16,988 112,000	32,900 112,000	49,550 112,000	45,456 112,000	40,035 65,912	22,832 65,912

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	19
201	Gold Crown Lanes	Dover, Delaware	24	22,738	19,960 48,000	44,987 48,000	54,664 48,000	53,258 48,000	32,054 48,000	(675) 28,248	151,4 28,24
202	Palace Bowl	Eau Gallie, Florida	32	3,071	17,856 64,000	36,107 64,000	48,964 64,000	25,126 64,000	14,208 64,000	5,354 37,664	17,681 37,664
203	Imperial Bowl	Dania, Florida	54	(31,678)	(10,954) 108,000	9,921 108,000	26,664 108,000	39,417 108,000	54,982 108,000	51,490 63,558	66,37 63,55
204	Congress Bowl	No. Miami, Florida	52	4,474	16,159 104,000	33,334 104,000	16,624 104,000	53,218 104,000	77,507 104,000	79,879 61,204	28,571 61,204
205	Cedonia Lanes	Baltimore, Maryland	20TP 20DP	(6,113)	9,097 40,000	53,768 40,000	20,337 40,000	30,856 40,000	61,676 40,000	103,110 23,540	117,906 23,540
206	Broadview Bowl	Bedford, Indiana	24	(2,552)	18,804 48,000	15,264 48,000	11,473 48,000	(8,369) 48,000	6,717 48,000	2,745 28,248	5,563 28,248
207	Suburban Lanes	Bloomington, Indiana	24	22,652	30,978 48,000	27,499 48,000	22,632 48,000	16,526 48,000	30,668 48,000	28,912 28,248	29,212 28,248
208	Lincoln Lanes	Booneville, Indiana	16	(9,243)	4,088 32,000	5,477 32,000	10,930 32,000	6,474 32,000	13,362 32,000	14,433 18,832	12,044 18,832
209	Hunters Bowl	Huntingburg, Indiana	16	(1,932)	3,211 32,000	5,247 32,000	1,351 32,000	2,208 32,000	22,173 32,000	22,169 18,832	19,384 18,832
210	Starlite Bowl	Seymour, Indiana	24	(7,588)	8,499 48,000	8,828 48,000	(1,218) 48,000	(971) 48,000	23,475 48,000	7,033 28,248	6,854 28,248
211	Laurel Lanes	Washington, Indiana	24	(1,583)	(4,002) 48,000	15,654 48,000	11,312 48,000	7,671 48,000	15,163 48,000	12,498 28,248	21,961 28,248
212	Ridgelea Bowl	Fort Worth, Texas	32	(46,638)	15,814 64,000	22,923 64,000	30,664 64,000	27,502 64,000	56,353 64,000	85,311 37,664	94,609 37,664
213	Bowling Palace	Kingsville, Texas	28	(18,453)	(7,987) 56,000	(10,886) 56,000	(9,497) 56,000	(12,117) -	- -	- -	- -
214	Morristown Lanes (Lakeside Bowling)	Morristown, New Jersey	30	(25,308)	(30,346) 60,000	(26,977) 60,000	(2,843) -	- -	- -	- -	- -

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
215	Sunny Isle Lanes	No. Miami, Florida	32	(25,658)	(41,299) 64,000	(5,646) 64,000	- -	- -	- -	- -	- -
216	Lido Lanes	Newark, New Jersey	24	(35,772)	(37,069) 48,000	(37,755) 48,000	10,089 48,000	21,937 48,000	20,326 48,000	32,237 28,248	21,60 28,24
217	Moffat Lanes	Brooklyn, New York	24	(12,417)	838 48,000	(54,804) -	- -	- -	- -	- -	- -
218	Belmont Lanes	Pueblo, Colorado	24	(20,935)	6,360 48,000	14,65 48,000	(1,666) 48,000	(2,030) 48,000	(228) 48,000	26,030 28,248	36,81 28,24
219	Fair Lanes	Sterling, Colorado	20	(14,214)	(10,752) 40,000	(14,323) 40,000	4,277	- -	- -	- -	- -
220	Circle Lanes	Colorado Springs, Colorado	32	(14,309)	(49,367) 64,000	3,344 64,000	(15,470) 64,000	20,928 64,000	36,466 64,000	60,540 37,664	94,72 37,66
221	Lauderdale Lanes	Ft. Lauderdale, Florida	40	(58,952)	(30,771) 80,000	(7,039) 80,000	9,707 80,000	55,212 80,000	64,871 80,000	105,261 47,080	97,12 47,08
222	East Providence Lanes (Ten Pin)	E. Providence, Rhode Island	60	(28,325)	(640) 120,000	15,866 120,000	32,411 120,000	57,955 120,000	39,536 120,000	53,951 70,620	58,46 70,62
223	Collegiate Bowl	Albion, Michigan	20	1,163	17,763 40,000	18,850 40,000	6,244 40,000	14,198 40,000	867 40,000	8,947 23,540	(1,25 23,54
224	Baden Bowl	Baden, Pennsylvania	24	(18,071)	(791) 48,000	9,615 48,000	26,235 48,000	45,973 48,000	41,674 48,000	33,204 28,248	30,14 28,24
225	Holyoke Lanes	Holyoke, Massachusetts	44	(30,324)	(4,473) 88,000	(3,893) 88,000	(3,040) 88,000	19,428 88,000	(1,118) 88,000	6,488 51,788	29,16 51,78
226	Lowell Lanes	Lowell, Massachusetts	44	(18,710)	(12,524) 88,000	(3,740) 88,000	(3,763) 88,000	17,825 88,000	21,888 88,000	29,500 51,788	16,48 51,78
227	Northhampton Lanes	Northhampton, Massachusetts	22TP 10CP	(17,453)	13,153 44,000	11,878 44,000	12,726 44,000	13,865 44,000	22,519 44,000	26,018 25,894	26,52 25,89
228	Warwick Lanes	Warwick, Rhode Island	44	(18,815)	24,608 88,000	27,421 88,000	26,853 88,000	34,496 88,000	33,572 88,000	65,920 51,788	64,44 51,78

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
229	Bayshore Bowl	S. San Francisco, California	24	(24,309)	(15,874) 48,000	(20,681) 48,000	(859) -	- -	- -	- -	- -
230	Beechwood Bowl	Athens, Georgia	24	(26,742)	14,197 48,000	18,323 48,000	20,368 48,000	34,075 48,000	22,600 48,000	30,688 28,248	15,997 28,248
231	Northland Bowl	Tulsa, Oklahoma	32	(28,559)	(2,354) 64,000	(28,735) 64,000	2,377 -	- -	- -	- -	- -
232	Vestavia Lanes	Birmingham, Alabama	40	(17,206)	(37,998) 80,000	-	- -	- -	- -	- -	- -
233	Coronado Lanes	Oklahoma City, Oklahoma	24	(3,587)	(2,040) 48,000	2,211 48,000	(2,121) 48,000	18,907 48,000	43,780 48,000	41,064 28,248	34,548 28,248
234	Brunswick Center Ridge Lanes	N. Ridgeville, Ohio	34	2,333	(4,676) 68,000	33,831 68,000	39,448 68,000	41,305 68,000	52,575 68,000	96,885 40,018	139,131 40,018
236	Tri-Mor Bowl	Granite City, Illinois	32	(15,110)	(3,771) 64,000	1,579 64,000	15,675 64,000	39,274 64,000	13,201 64,000	26,496 37,664	34,610 37,664
237	Freeway Lanes	Providence, Rhode Island	44	(22,277)	(15,592) 88,000	(6,785) 88,000	(6,580) -	- -	- -	- -	- -
238	Bowlero Bowl	Leman Grove, California	40	(61,053)	(1,519) 80,000	(16,619) 80,000	(29,542) 80,000	4,508 80,000	20,137 80,000	48,453 47,080	51,523 47,080
239	Portland Lanes	Portland, Indiana	16	(8,621)	(6,788) 32,000	(1,468) 32,000	(351) -	- -	- -	- -	- -
240	Sun Bowl Lanes	Portland, Oregon	24	(12,566)	(9,642) 48,000	(17,941) 48,000	(11,195) 48,000	(6,461) 48,000	(5,088) 48,000	1,269 28,248	1,056 28,248
241	Bowladrome	Twin Falls, Indiana	24	(4,802)	26,081 48,000	16,760 48,000	26,452 48,000	16,459 48,000	29,952 48,000	12,765 28,248	(3,522) 28,248
242	Bruns. Sunset Lanes	Beaverton, Oregon	36	(11,169)	2,662 72,000	(8,417) 72,000	34,060 72,000	66,503 72,000	99,268 72,000	114,350 42,372	118,715 42,372
243	Bruns. Santa Paula Lanes	Santa Paula, California	20	(16,866)	(34,498) 40,000	(25,458) 40,000	(40,553) 40,000	(55,422) 40,000	(31,138) -	- -	- -

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
244	Bruns. Roxy Alleys	New York, New York	22	(17,030)	4,684 44,000	(41,311) 44,000	490 44,000	13,326 44,000	(25,546) 44,000	(44,806) 25,894	(164,413) 25,894
245	Bruns. Center Lanes	Newton, Iowa	16	(2,425)	3,338 32,000	7,103 32,000	20,809 32,000	18,935 32,000	21,747 32,000	13,067 18,832	3,540 18,832
246	Bruns. Granada Lanes	Granada Hills, California	48	(6,715)	31,303 96,000	36,935 96,000	5,112 96,000	41,472 96,000	42,520 96,000	82,817 56,496	130,595 56,496
247	Bruns. Tri City Bowl	Sheffield, Alabama	30	(26,404)	(6,227) 60,000	(662) -	- -	- -	- -	- -	- -
248	Bruns. Shoreway Lanes	Sheffield Lake, Ohio	24	290	21,340 48,000	34,871 48,000	50,208 48,000	54,546 48,000	49,952 48,000	62,698 28,248	78,866 28,248
249	Paris Lanes	Paris, Texas	16	(18,413)	(2,240) 32,000	3,956 32,000	969 32,000	9,817 32,000	20,001 32,000	33,224 18,832	15,083 18,832
250	Ramona Lanes	Jacksonville, Florida	32	(12,446)	(1,396) 64,000	2,220 64,000	(3,432) 64,000	9,957 64,000	18,913 64,000	27,400 37,664	40,177 37,664
251	Lenox Lanes	Atlanta, Georgia	18	(7,761)	1,768 36,000	13,088 36,000	4,998 36,000	(2,695) 36,000	13,863 36,000	(7,603) 21,186	28,541 21,186
252	Bourbon Bowl	Paris, Kentucky	16	4,438	13,613 32,000	6,255 32,000	9,994 32,000	18,722 32,000	22,746 32,000	11,085 18,832	19,182 18,832
253	Magnolia Lanes	Arlington, California	32	(20,156)	7,237 64,000	5,267 64,000	22,430 64,000	38,335 64,000	32,625 64,000	35,275 37,664	66,378 37,664
254	Olympic Center	Middletown, Kentucky	32	(17,930)	(9,704) 64,000	(13,998) 64,000	(682) -	- -	- -	- -	- -
255	Bowl-A-Rama	Muskogee, Oklahoma	20	(14,824)	884 40,000	(11,810) 40,000	(23,622) 40,000	(23,254) 40,000	(16,686) -	- -	- -
256	Plaza Lanes	St. Charles, Missouri	24	(5,506)	7,674 48,000	15,358 48,000	33,012 48,000	43,508 48,000	43,886 48,000	47,988 28,248	15,973 28,248
257	Pimingo Lanes	Goody, Kentucky	20	(2,093)	1,134 40,000	(11,353) 40,000	(690) -	- -	- -	- -	- -

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
258	Amity Bowling Center	Woodbridge, Connecticut	24	(3,435)	5,821 48,000	12,466 48,000	30,864 48,000	34,978 48,000	50,672 48,000	61,819 28,248	41,766 28,248
259	Twin City Bowl	Council Bluffs, Iowa	16	(14,267)	(6,591) 32,000	3,521 32,000	1,156 32,000	13,963 32,000	14,891 32,000	11,710 18,832	25,697 18,832
260	Gamecock Lanes	Sumpter, South Carolina	24	(1,914)	31,305 48,000	12,137 48,000	12,714 48,000	19,496 48,000	27,203 48,000	48,948 28,248	36,172 28,248
261	Charger Lanes	Norton Village, Ohio	32	1,985	42,378 64,000	66,614 64,000	57,958 64,000	46,003 64,000	67,080 64,000	77,054 37,664	60,161 37,664
262	College Plaza	Alliance, Ohio	32	4,298	8,282 64,000	(16,271) 64,000	(11,330) 64,000	(8,068) 64,000	25,656 64,000	34,223 37,664	64,962 37,664
263	Mt. Vernon Lanes (Charger Lanes)	Mt. Vernon, Ohio	24	4,797	47,954 48,000	20,348 48,000	20,803 48,000	23,616 48,000	18,055 48,000	13,398 28,248	13,535 28,248
264	Americana Lanes	Ozone Park, New York	64	15,086	35,508 128,000	99,920 128,000	89,448 128,000	77,448 128,000	145,185 128,000	193,304 75,328	135,731 75,328
265	Roosevelt Lanes	Roosevelt, New York	40	537	(32,383) 80,000	(31,089) 80,000	(25,590) 80,000	(18,484) -	- -	- -	- -
266	Willow Lanes	Mc Cook, Nebraska	16	(2,343)	(10,885) 32,000	- -	- -	- -	- -	- -	- -
267	Alameda Bowl	Denver, Colorado	16	(1,142)	(9,338) 32,000	(5,510) 32,000	(2,869) -	- -	- -	- -	- -
268	Lakeland Lanes	Lakeland, Florida	24	(3,723)	67,108 48,000	60,945 48,000	61,118 48,000	74,673 48,000	62,817 48,000	94,343 28,248	107,024 28,248
269	Capitol Bowling Center	Austin, Texas	32	(1,240)	(1,944) 64,000	(75) 64,000	42,359 64,000	42,701 64,000	49,108 64,000	48,505 37,664	56,451 37,664
270	South Park Lanes	S. Milwaukee, Wisconsin	40	4,058	(16,859) 80,000	801 80,000	8,295 80,000	12,507 80,000	25,512 80,000	2,444 47,080	67,478 47,080
271	Elitch Lanes	Denver, Colorado	24	5,701	(12,336) 48,000	(6,562) 48,000	11,110 48,000	40,024 48,000	65,989 48,000	82,800 28,248	81,034 28,248

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
272	Hilldale Bowl	Madison, Wisconsin	48	15,731	(20,019) 96,000	(20,726) 96,000	(25,206) 96,000	(30,536) -	- -	- -	- -
273	Euclid Green Lanes	Cleveland, Ohio	32	4,727	(9,887) 64,000	(23,200) 64,000	(15,448) 64,000	(12,007) 64,000	(22,149) 64,000	(26,681) 37,664	(9,614) 37,664
274	Brunswick Bowl Austin Hghy.Bowl. Cntr.	San Antonio, Texas	24	(13,495)	(24,496) 48,000	1,081 48,000	31,073 48,000	(2,052) 48,000	15,904 48,000	14,814 -	- -
275	Red Fox Lanes	Long Beach, California	32	3,773	33,369 64,000	20,681 64,000	384 64,000	17,065 64,000	33,075 64,000	41,613 37,664	59,111 37,664
276	Ball & Pin Lanes	Lombard, Illinois	24	(8,289)	3,890 48,000	52,085 48,000	66,899 48,000	65,611 48,000	80,949 48,000	93,617 28,248	46,965 28,248
277	Starlite Lanes	Knoxville, Tennessee	24	2,241	13,253 48,000	(3,516) 48,000	25,126 48,000	27,743 48,000	33,972 48,000	25,804 28,248	35,880 28,248
278	Pel Park Lanes	Bronx, New York	31	6,120	44,165 62,000	35,547 62,000	34,587 62,000	13,387 62,000	39,727 62,000	54,772 36,487	69,896 36,487
279	Carriage House Lanes	Minneapolis, Minnesota	32	7,632	24,208 64,000	31,247 64,000	27,076 64,000	4,768 64,000	41,948 64,000	73,511 37,664	80,614 37,664
280	Skylark Lanes	Petersburg, Virginia	16	(10,508)	(5,924) 32,000	- -	- -	- -	- -	- -	- -
281	Wescal Bowling Lanes	Sulphur, Louisiana	16	(11,292)	(10,996) 32,000	(16,542) 32,000	(254) -	- -	- -	- -	- -
282	Coastal Bend Lanes	Aransas Pass, Texas	16	(3)	(5,580) 32,000	(4,347) 32,000	2,970 32,000	(3,283) 32,000	7,929 32,000	(1,283) 18,832	3,601 18,832
283	Sun Valley Lanes	Roswell, Georgia	16	(4,703)	(20,570) 32,000	(14,447) 32,000	(155) -	- -	- -	- -	- -
284	Hoffman Heights Bowl	Aurora, California	24	2,564	(29,352) 48,000	(20,936) 48,000	(17,117) 48,000	(4,968) 48,000	291 48,000	26,468 28,248	43,644 28,248
285	Rubidoux Bowl	Riverside, California	24	(6,076)	(10,708) 48,000	(10,426) 48,000	75 -	- -	- -	- -	- -

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
286	Harcoal Lanes	Harlan, Kentucky	17	(7,338)	(19,638) 34,000	(12,477) -	- -	- -	- -	- -	- -
287	Wise County Bowling Center	Wise, Virginia	20	1,571	(4,661) 40,000	(263) -	- -	- -	- -	- -	- -
288	St. Albans Bowl	St. Albans, New York	29	173	(40,436) 58,000	(29,399) -	- -	- -	- -	- -	- -
289	Cochise Bowl	Douglas, Arizona	16	(2,334)	8,178 32,000	- -	-	-	-	-	-
290	Village Lanes	Chicago, Illinois	16	2,681	4,316 32,000	5,173 32,000	22,153 32,000	4,479 32,000	3,436 32,000	42,420 18,832	26,249 18,832
291	Deland Lanes	Deland, Florida	24	857	(8,680) 48,000	4,339 48,000	(2,579) 48,000	6,899 48,000	10,153 48,000	9,290 28,248	7,432 28,248
292	Hurricane Bowl	Marion, Virginia	16	1,346	(1,168) 32,000	6,863 32,000	4,830 32,000	6,420 32,000	3,386 32,000	12,319 18,832	18,944 18,832
293	Bruns. Friendly Lanes	Greensboro, North Carolina	40	3,574	4,749 80,000	14,783 80,000	12,252 80,000	11,155 80,000	34,564 80,000	122,934 47,080	152,403 47,080
294	College Village Lanes	High Point, North Carolina	32	1,394	(23,969) 64,000	- -	-	-	-	-	-
295	Bruns. Shelby Lanes	Shelby, North Carolina	24	1,072	(13,688) 48,000	(6,793) -	- -	- -	- -	- -	- -
296	Bowlerland Lanes	Van Nuys, California	32	(21,582)	(3,105) 64,000	(8,129) 64,000	(6,020) 64,000	(9,593) 64,000	10,335 64,000	44,066 37,664	52,462 37,664
297	Sanger Lanes	Sanger, California	16	758	(27,809) 32,000	(10,136) -	- -	- -	- -	- -	- -
298	Dutchess Lanes	Poughkeepsie, New York	26	(5,192)	(20,464) 52,000	(17,848) 52,000	(12,310) 52,000	- -	- -	- -	- -
299	Cabrillo Lanes	Watsonville, California	24	3,151	20,986 48,000	- -	- -	- -	- -	- -	- -

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
300	Applewood Lanes	Golden, California	16	(4,507)	(32,385) 32,000	(5,490) 32,000	(9,709) 32,000	(530) 32,000	8,951 32,000	23,136 18,832	26,76 18,83
301	Broadmoor Bowl	Denver, Colorado	32	2,164	21,430 64,000	12,462 64,000	49,137 64,000	11,232 64,000	45,593 64,000	78,657 37,664	76,12 37,66
302	Bruns. Rossmoor Bowling Center	Los Alamitos, California	40		8,975 80,000	35,917 80,000	17,144 80,000	47,973 80,000	90,511 80,000	167,562 47,080	137,19 47,08
303	Bruns. Bowlerland	Fort Worth, Texas	32		(37,124) 64,000	(8,049) 64,000	25,325 64,000	43,681 64,000	50,458 64,000	53,391 37,664	50,079 37,66
304	Matador Bowl	Northbridge, California	24		7,138 48,000	(4,015) 48,000	(5,435) 48,000	(19,649) 48,000	(7,491) 48,000	38,607 28,248	61,23 28,24
305	Bruns. Olive Ave. Bowl	Porterville, California	16		22,511 32,000	13,625 32,000	11,103 32,000	1,657 32,000	10,621 32,000	5,740 18,832	5,68 18,83
306	Palmetto Lanes	Rock Hill, South Carolina	32		(10,266) 64,000	(9,751) 64,000	- -	- -	- -	- -	- -
306	Palmetto Lanes	Rock Hill, South Carolina	24				(1,796) 48,000	(15,049) 48,000	(2,368) 48,000	16,696 28,248	26,26 28,24
307	Woodhaven Lanes	Glendale, New York	60		(30,601) 120,000	73,902 120,000	- -	- -	- -	- -	- -
307	Woodhaven Lanes	Glendale, New York	52				49,759 104,000	50,065 104,000	106,944 104,000	144,925 61,204	144,85 61,20
308	Cypress Lanes	Winter Haven, Florida	16		30,458 32,000	34,796 32,000	28,919 32,000	36,467 32,000	38,161 32,000	39,170 18,832	36,03 18,83
309	Bruns. Colony Bowl	Brooklyn, New York	48		1,147 96,000	40,295 96,000	(6,902) 96,000	(60,502) -	- -	- -	- -
310	King of Prussia Lanes	King of Prussia, Pennsylvania	32		(26,241) 64,000	(38,052) 64,000	(13,130) 64,000	(240) 64,000	6,693 64,000	46,929 37,664	30,99 37,66
311	Bruns. Royal Lanes	W. Hempstead, L.I., N.Y.	48		(13,182) 96,000	15,413 96,000	5,198 96,000	23,191 96,000	3,711 96,000	13,925 56,496	21,37 56,49

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
312	Bloomfield Bowl-O-Mat	Bloomfield, New Jersey	40		(15,197) -	361 80,000	8,491 80,000	24,271 80,000	41,547 80,000	25,643 80,000	42,07? 47,08C
313	Ronnell Bowl	Sylmar, California	32		(15,598) -	(18,955) 64,000	(34,655) 64,000	(17,310) 64,000	(37,359) 64,000	(4,578) 64,000	- -
314	Bruns. King Pin Lanes	Garfield Hgts. Ohio	32		24,460 -	19,108 64,000	13,546 64,000	7,318 64,000	23,511 64,000	32,699 64,000	35,119 37,664
315	Bruns. Suburban Lanes	Decatur, Georgia	32		7,007 -	27,002 64,000	16,940 64,000	29,957 64,000	41,895 64,000	63,133 64,000	86,756 37,664
316	Bruns. Freedom Lanes	Charlotte, North Carolina	32		7,239 -	25,029 64,000	32,479 64,000	57,680 64,000	51,146 64,000	70,886 64,000	65,597 37,664
317	Bruns. Holiday Lanes	LaCrosse, Wisconsin	40		(62,449) -	(17,468) 80,000	(3,506) -	- -	- -	- -	- -
318	J.Town Lanes	Jefferson Town. Kentucky	24		(1,724) -	10,655 48,000	30,685 48,000	24,934 48,000	31,806 48,000	51,443 48,000	63,459 28,248
319	Bruns. Mil Sher Lanes	Tonawanda, New York	36		(6,245) -	42,435 72,000	41,228 72,000	36,246 72,000	50,409 72,000	55,131 72,000	64,452 42,372
320	Bruns. Briar Hill Lanes	Briar Cliff Manor, New York	24		(6,199) -	22,718 48,000	1,874 48,000	(13,663) 48,000	2,093 48,000	(32,027) 48,000	(17,635 28,248
322	Bruns. Monmouth Lanes	Long Branch, New Jersey	32		(2,053) -	8,454 64,000	40,270 64,000	41,104 64,000	41,692 64,000	45,747 64,000	8,352 37,664
323	Bruns. Airport Plaza	Hazlet, New Jersey	32		(15,021) -	28,881 64,000	46,094 64,000	81,299 64,000	76,372 64,000	99,385 64,000	93,257 37,664
324	Bruns. E. Port Bowl	Elizabeth, New Jersey	32		(11,504) -	(16,744) 64,000	143 -	- -	- -	- -	- -
325	Bruns.Lincoln Lanes	Merrill,	16		(6,846) -	13 32,000	(2,408) 32,000	10,509 -	- -	- -	- -
326	Holiday Lanes	Johnson City, Tennessee	24		2,700 -	17,326 48,000	11,604 48,000	18,120 48,000	26,933 48,000	52,980 48,000	71,296 28,248

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
327	Bruns. Belmont Lanes	Smyrnia,	24		7,067	41,065	42,668	53,024	43,149	45,099	57,102
					-	48,000	48,000	48,000	48,000	48,000	28,248
329	Bruns. Fiesta Lanes	Lubbock, Texas	24		(9,457)	(8,490)	(499)	1,700	(15,426)	(21,983)	-
					-	48,000	48,000	48,000	48,000	48,000	-
330	Escondido Bowl	Escondido, California	24		(15,562)	(38,289)	(42,255)	(49,556)	(27,162)	(8,540)	14,463
					-	48,000	48,000	48,000	48,000	48,000	28,248
331	Bruns. Olympia Bowl	Belleville, New Jersey	32		(9,673)	(36,833)	(4,565)	60,740	72,266	75,775	89,157
					-	64,000	64,000	64,000	64,000	64,000	37,664
332	Town & Country Lanes	Midvale, Utah	18		(10,926)	(7,896)	(8,647)	(3,171)	1,046	633	2,449
					-	36,000	36,000	36,000	36,000	36,000	21,186
333	Bruns. Plaza Bowl	Virginia Beach, Virginia	40		15,416	39,538	39,951	78,486	93,840	108,213	100,843
					-	80,000	80,000	80,000	80,000	80,000	47,080
334	Bruns. Rainbow Lanes	Brooklyn, New York	56		5,201	84,475	101,185	91,991	76,138	108,054	101,414
					-	112,000	112,000	112,000	112,000	112,000	65,912
335	Holiday Bowl	Groves, Texas	32		(3,078)	20,421	14,926	1,311	12,756	36,352	16,573
					-	64,000	64,000	64,000	64,000	64,000	37,664
336	Sterling Village Lanes	Reno, Nevada	20		(4,900)	(2,903)	6,959	16,914	45,545	65,374	72,026
					-	40,000	40,000	40,000	40,000	40,000	23,540
337	Bruns. Bowlero	Tulsa, Oklahoma	24		(1,284)	(17,648)	(1,223)	2,984	2,402	6,830	(12,045)
					-	48,000	48,000	48,000	48,000	48,000	28,248
338	Bruns. Cherokee Bowl	Independence, Kentucky	16		2,053	8,065	(2,148)	2,080	16,409	29,438	35,126
					-	32,000	32,000	32,000	32,000	32,000	18,832
339	Wonder Bowl	Downey, California	64		(32,298)	(75,136)	(125,152)	(56,078)	(16,031)	45,877	88,616
					-	128,000	128,000	128,000	128,000	128,000	75,328
340	Bruns. Hix. Bowl	Hixon, Tennessee	32		(3,680)	(30,692)	(3,650)	5,793	14,078	30,358	31,549
					-	64,000	64,000	64,000	64,000	64,000	37,664
341	Bowlhaven Lanes	White Haven, Tennessee	36		17,075	52,198	66,645	68,654	91,540	97,831	103,793
					-	72,000	72,000	72,000	72,000	72,000	42,372

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
342	Bruns. Shorecrest Bowl	Racine, Wisconsin	24		(6,181)	366	4,948	5,503	22,871	25,938	'25,329
					-	48,000	48,000	48,000	48,000	48,000	28,248
343	Surf Bowl	Santa Cruz, California	26		8,387	(2,542)	1,549	(25,565)	(1,621)	7,387	13,555
					-	52,000	52,000	52,000	52,000	52,000	30,602
344	Bruns. Rose Bowl	Buffalo Grove, Illinois	24		12,289	(30,549)	26,792	42,444	57,327	11,862	-
					-	48,000	48,000	48,000	48,000	48,000	-
345	Carteret Lanes	Carteret, New Jersey	32		1,989	(20,936)	(682)	41,156	13,923	(9,466)	4,431
					-	64,000	64,000	64,000	64,000	64,000	37,664
346	Keglers Lanes	Morgan City, Louisiana	24		(3,674)	(20,946)	(318)	(9,367)	16,272	3,690	(1,972)
					-	48,000	48,000	48,000	48,000	48,000	28,248
347	Thunderbird Lanes	Boulder, Colorado	24		4,789	22,319	12,093	21,569	35,568	70,598	67,779
					-	48,000	48,000	48,000	48,000	48,000	28,248
348	Hollywood Legion Lanes	Hollywood, California	44		10,815	23,437	29,701	34,353	47,244	47,284	40,986
					-	88,000	88,000	88,000	88,000	88,000	51,788
349	Bruns. Wonderbowl	Anaheim, California	48		3,925	(14,419)	35,380	96,568	130,717	132,019	153,123
					-	96,000	96,000	96,000	96,000	96,000	56,496
350	Bruns. Delta Bowl	California	24			7,957	(4,603)	1,334	15,817	48,926	52,032
						48,000	48,000	48,000	48,000	48,000	28,248
351	Bruns. Baldwin Park Bowl	Baldwin, California	32			(33,541)	(59,067)	(28,518)	-	-	-
						64,000	64,000	-	-	-	-
352	Town & Country Lanes	California	32			(68,800)	-	-	-	-	-
						-	-	-	-	-	-
353	Coral Carlin Bowl	Florida	16			(5,906)	-	-	-	-	-
						-	-	-	-	-	-
354	Santa Fe Lanes	Whittier, California	32			(23,938)	(56,949)	25,464	42,771	46,903	15,201
						64,000	64,000	64,000	64,000	64,000	64,000
355	Royal Oaks Lanes	Duarte, California	24			(18,654)	(54,593)	(43,525)	(45,656)	(18,412)	-
						48,000	48,000	48,000	48,000	48,000	-

ANALYSIS OF CASH FLOW

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
356	Stardust Lanes	Delano, California	16			(29,394) 32,000	5,369 -	- -	- -	- -	- -
357	Hillcrest Lanes	Sedalia, Missouri	16			(8,980) -	(7,623) -	- -	- -	- -	- -
358	Murray's 51 Bowl	Belle Vernon, Pennsylvania	36			(7,005) -	(21,979) 72,000	(32,792) 72,000	14,000 72,000	10,500 72,000	(321) 72,000
359	Bruns. Camden Lanes	Camden, New Jersey	64			7,486 -	52,158 128,000	32,870 128,000	49,915 128,000	82,411 128,000	75,245 128,000
360	Brunswick Creole Lanes	Vincennes, Indiana	16			5,234 -	10,300 32,000	12,604 32,000	(1,370) 32,000	9,406 32,000	12,027 32,000
361	Medallion Lanes	Maitland, Florida	24			(3,142) -	(13,417) 48,000	9,912 48,000	33,017 48,000	65,139 48,000	71,274 48,000
362	Banning Bowl	Banning, California	16			(7,949) -	(31,969) 32,000	(27,085) 32,000	(1,240) -	- -	- -
363	Chalet Bowl	Crystal, Minnesota	24			2,963 -	(6,380) 48,000	9,308 48,000	31,023 48,000	27,335 48,000	7,343 48,000
364	Land Park Bowl	Sacramento, California	32			1,952 -	19,536 64,000	65,359 64,000	40,105 64,000	69,209 64,000	80,719 64,000
365	East End Bowl	New York, New York	32				11,649 64,000	51,587 64,000	76,202 64,000	100,000 64,000	88,687 64,000
366	College Lanes	New Platz, New York	24				7,919 -	18,612 48,000	11,323 48,000	37,266 48,000	32,326 48,000
367	Guys & Dolls Lanes	Pittsburg, Pennsylvania	32				(13,689) -	24,186 64,000	20,174 64,000	- -	- -
367	Guys & Dolls Lanes	Pittsburg, Pennsylvania	36				- -	- -	- -	49,311 72,000	56,392 72,000
368	Holiday Lanes	Denton, Texas	20				(1,079) -	12,554 40,000	17,741 40,000	40,567 40,000	39,941 40,000

ANALYSIS OF CASH FLOW

A1731
Exhibit P48

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
369	Monroe Lanes	Covington, Virginia	16				(10,607) -	(3,014) 32,000	(2,391) 32,000	6,572 32,000	(3,036 32,000
370	Coliseum Lanes	Charlotte, North Carolina	40				(9,491) -	35,123 80,000	68,618 80,000	91,224 80,000	106,717 80,000
371	Bruns. Holiday Bowl	Lawton, Ohio	24				(6,788) -	(13,162) 48,000	3,005 48,000	38,743 48,000	38,13 48,000
372	Bruns. Classic Lanes	Athens, Tennessee	16				1,867 -	4,734 32,000	(2,080) 32,000	7,470 32,000	2,786 32,000
373	Bruns. Camarillo Lanes	Camarillo, California	20				(12,719) -	(46,455) 40,000	(30,399) 40,000	(1,732) 40,000	5,490 40,000
374	Bruns. Edison Bowl-O-Mat	Edison, New Jersey	40					5,079 -	45,426 80,000	67,715 80,000	60,21 80,000
375	Cocoa Bowl-O-Rama	Cocoa, Florida	24					(13,826) -	18,353 48,000	5,290 48,000	15,71 48,000
376	Western Bowl	Chicago Heights Illinois	24					13,098 -	133,855 48,000	145,729 48,000	144,56 48,0
377	Street Lanes	Feasterville, Pennsylvania	32					(21,613) -	45,801 64,000	58,569 64,000	53,33 64,000
378	El Cajon Bowl	El Cajon, California	24					(64,147) -	(34,168) 48,000	10,696 48,000	(17 48,00
379	Iceland Bowl	Albuquerque, New Mexico	32					(13,673) -	(33,107) 64,000	(19,976) -	- -
380	Playmor Bowl	Pittsburg, Pennsylvania	32					(18,917) -	15,858 64,000	5,377 64,000	9,4 64,0
381	Tenpin on the Mall	Paramus, New Jersey	36					2,357 -	4,980 72,000	20,414 72,000	7,5 72,0
382	Parkwood Lanes	Orlando, Florida	32					(18,357) -	(9,544) 64,000	45,774 64,000	24,1 64,0

ANALYSIS OF CASH FLOW

ENTER UMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
151	Olympic Bowl	Rochester, New York	72 8 other	- -	- -	- -	- -	- -	- -	- -	153,302 *
152	Fairview Lanes	Fairport, New York	24	- -	- -	- -	- -	- -	- -	- -	36,556 *
153	Ithaca Bowl	Ithaca, New York	24	- -	- -	- -	- -	- -	- -	- -	24,975 *
154	Watertown Bowl	Watertown, New York	48	- -	- -	- -	- -	- -	- -	- -	76,268 *
155	Corning Bowl	Corning, New York	32	- -	- -	- -	- -	- -	- -	- -	92 *
156	Oswego Pinerama	Oswego, New York	32	- -	- -	- -	- -	- -	- -	- -	34,173 *
157	Coral Lanes	Olean, New York	24	- -	- -	- -	- -	- -	- -	- -	19,281 *
158	Fulton Bowlerama	Fulton, New York	24	- -	- -	- -	- -	- -	- -	- -	16,570 *
159	Seaway Lanes	Massena, New York	24	- -	- -	- -	- -	- -	- -	- -	17,726 *
160	Holiday Bowl	Syracuse, New York	48	- -	- -	- -	- -	- -	- -	- -	49,432 *

CENTER NUMBER	NAME	LOCATION	NO. OF LANES	1965	1966	1967	1968	1969	1970	1971	1972
383	Sands Bowl	Lancaster, California	32					(15,710)	13,502	20,413	43,980
								-	64,000	64,000	64,000
385	Northern Bowl	Glendale Heights, Illinois	32						50,952	166,199	98,402
									-	64,000	64,000
386	Wayne Rec. Center	Ft. Wayne, Indiana	32						(4,437)	116,592	99,870
									-	64,000	64,000
387	Mountain Lanes	Wausau, Wisconsin	24						(26,647)	(15,560)	12,029
									-	48,000	48,000
388	Janes Lanes	Marshfield, Wisconsin	24						(21,821)	2,614	(19,945)
									-	48,000	48,000
389	Lido Lanes	Lido, New Jersey	40						(27,013)	5,130	(45,677)
									-	80,000	80,000
391	Rahway Recreation	Rahway, New Jersey	24						3,133	24,000	10,131
									-	48,000	48,000
392	Brunswick Lakeshore	Gainesville, Georgia	24						5,574	8,543	2,611
									-	48,000	48,000
393	Carrollton Bowl	Bridgeton, Missouri	24							37,087	86,234
										-	48,000
394	Bruns. Orange Bowl	Anytime, California	36							75,023	125,901
										-	72,000
395	Sharpstown Bowl	Sharpstown, Texas	32							(11,170)	190,950
										-	64,000
396	Ottumwa Lanes	Ottumwa, Iowa	24							(26,813)	(16,873)
										-	48,000
397	Gladstone Bowl	Gladstone, Missouri	24							33,432	69,707
										-	48,000
398	Harris Hill Lanes	Buffalo, New York	24								

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BCOD CONSOLIDATED SUMMARIES
COMPARED TO OPERATIONS IN HANDS OF INDIVIDUAL PROPRIETORS
DOMESTIC OPERATIONS ONLY

	1965	1966	1967	1968	1969	1970	1971	1972	TOTAL
Number of Centers	124	149	162	164	163	167	167	167	
Number of Lanes	3,629	4,521	4,988	5,076	5,015	5,144	5,178	5,200	
Number of Ten-Pin Lanes	3,519	4,411	4,878	4,986	4,825	5,054	5,088	5,110	
Profit/(Loss)	$(2,171,000)	$(1,138,000)	$(1,205,000)	$ (751,000)	$ 357,000	$ 2,310,000	$ 4,877,000	$ 6,296,000	$ 8,577,000
For Individual:									
Brunswick Net	$(2,171,000)	$(1,138,000)	$(1,205,000)	$ (751,000)	$ 357,000	$ 2,310,000	$ 4,877,000	$ 6,296,000	$ 8,577,000
Interest @ $320 Per Lane Ten-Pin Lanes Only	-	(1,412,000)	(1,561,000)	(1,596,000)	(1,544,000)	(1,617,000)	(1,109,000)	(1,114,000)	(9,953,000)
Depreciation @$1,000 Per Lane, Ten-Pin Lanes Only	-	(4,411,000)	(4,878,000)	(4,986,000)	(4,825,000)	(5,054,000)	(5,088,000)	(5,110,000)	(34,352,000)
Less Brunswick Depreciation	-	2,122,000	2,544,000	2,660,000	2,570,000	2,279,000	2,065,000	2,175,000	16,415,000
	$(2,171,000)	$(4,837,000)	$(5,100,000)	$(4,673,000)	$(3,442,000)	$(2,082,000)	$ 745,000	$ 2,247,000	$(19,313,000)

(1) Assuming that lanes have been paid for in five years, interest in 1971 and 1972 has been reduced from $320 to $218 per lane.

A1735
Exhibit P50

BCOD CONSOLIDATED SUMMARIES
BRUNSWICK CASH FLOW COMPARED TO CASH NEEDS OF INDIVIDUAL PROPRIETORS
DOMESTIC OPERATIONS ONLY

	1965	1966	1967	1968	1969	1970	1971	1972	TOTAL
Number of Centers	124	149	162	164	163	167	167	167	
Number of Lanes	3,629	4,521	4,988	5,076	5,015	5,144	5,178	5,200	
Number of Ten-Pin Lanes	3,519	4,411	4,878	4,986	4,825	5,054	5,088	5,110	
Profit/(Loss)	$(2,171,000)	$(1,136,000)	$(1,205,000)	$ (751,000)	$ 357,000	$ 2,310,000	$ 4,877,000	$ 6,298,000	$ 8,577,000
Depreciation	$ 879,000	$ 2,122,000	$ 2,544,000	$ 2,660,000	$ 2,570,000	$ 2,279,000	$ 2,065,000	$ 2,175,000	$ 17,294,000
Cash Flow	$(2,681,000)	$ 986,000	$ 1,339,000	$ 1,898,000	$ 2,804,000	$ 4,469,000	$ 6,649,000	$ 8,038,000	$ 23,502,000
Brunswick Cash Flow	$(2,681,000)	$ 986,000	$ 1,339,000	$ 1,898,000	$ 2,804,000	$ 4,469,000	$ 6,649,000	$ 8,038,000	$ 23,502,000
Individual Needs $2,000 per Lane Ten-Pin lanes only	-	$ 8,822,000	$ 9,756,000	$ 9,972,000	$ 9,650,000	$10,108,000	$ 5,989,000 (1)	$ 6,014,000 (1)	$ 60,311,000
Excess/(Deficiency)	$(2,681,000)	$ (7,836,000)	$(8,417,000)	$(8,074,000)	$(6,846,000)	$(5,639,000)	$ 660,000	$ 2,024,000	$(36,809,000)

(1) Assuming that lanes have been paid for in five years, cash need has been reduced from $2,000 to $1,177 per lane.

DX 52

NET INCOME OR LOSS OF

FOUR PLAINTIFF COMPANIES

	HOLIDAY	PARADISE	PARAMUS	PUEBLO
1961	$ 2,321	$ (9,441)	$ 37,746	$(33,763)
1962	52,989	(14,081)	17,419	(25,359)
1963	38,583	(56,178)	(3,922)	(3,637) 8/1/63
1964	38,499	(51,564)	14,840	(40,967)
1965	17,140	(64,582)	(1,644)	(54,156)
1966	3,841	(59,735)	(39,894)	(75,916)
1967	17,932	(49,079)	(48,649)	(62,187)
1968	(39,190)	(15,340)	(63,857)	(61,637)
1969	(51,182)	(4,780)	(55,409)	(57,738)
1970	(27,098)	4/1 (20,313)	(55,153)	(50,831)
1971	1,821	6,883	(44,536)	(27,707)
1972	47,871	23,344	(10,542)	(17,302)
	103,627	(314,866)	(253,601)	(511,200)

A1736
Exhibit P52

DAMAGES TO FOUR OF PLAINTIFF CENTERS

	ADDITIONAL ANNUAL BOWLING REVENUES		NET INCOME PER $1,000 BOWLING REVENUES		PER YEAR	NUMBER OF YEARS	DAMAGES
Holiday Bowl-O-Mat	$ 60,000 to $ 75,000	X	$1,328	=	$ 79,680 to $ 99,600	(12/10/65 to 8/31/69) 3 3/4	$ 298,800 to $ 373,500
Paradise Bowl-O-Mat	$ 100,000 to $ 120,000	X	$ 1,247	=	$ 124,700 to $ 149,640	(9/1/62 to 8/31/70) 8	$ 997,600 to $ 1,197,120
Paramus Bowl-O-Mat	$ 120,000 to $ 140,000	X	$ 1,140	=	$ 136,800 to $ 159,600	(3/26/65 to 4/1/73) 8	$ 1,094,400 to $ 1,276,800
Pueblo Bowl-O-Mat	$ 90,000 to $ 100,000	X	$ 1,109	=	$ 99,810 to $ 110,900	(8/1/63 to 4/1/73) 9 2/3	$ 964,830 to $ 1,072,030

SUMMARY OF DAMAGES TO DATE

	LOWER RANGE	HIGHER RANGE
Holiday Bowl-O-Mat	$ 298,800	$ 373,500
Paradise Bowl-O-Mat	997,600	1,197,120
Paramus Bowl-O-Mat	1,094,400	1,276,800
Pueblo Bowl-O-Mat	964,830	1,072,030
	$ 3,355,630	$ 3,919,450

-2-

maximum of 40 lanes no matter how many more lanes each member may have. It was felt that there was very little possibility of the adoption of this proposal.

There was an informal discussion pertaining to various problems of mutual interest to the Chains.

The meeting was then adjourned.

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3/21/68 PX58

The Chain Organizations Committee meeting held at Lansing, Michigan, on Thursday, January 27, 1966, at 10:33 A.M. Present:

Ruben A. Denhoff, Chairman.....General Bowling Corp.
Daniel Lieblich)
Arnold Tames)..... National Bowl-O-Mat Corp.
Nicholas Mormando.....Levittown Lanes, etc.
Nick Rinaldi.....Washington, D.C.
Ed Goldberg)
Syl Sobeski).....Bowl America
Manny Shindel.....Eastern Bowling Corp.
Marshall Hannock.....Albany, N.Y.
Peter Santora.....Fair Lanes
Sanford Mansell)
Joseph Handy)..... Great Lakes Bowling Corp.
Bob Coburn.....BPAA Staff

PLAINTIFF'S EXHIBIT
1-58
C 65-1-1

A report was made by Ed Goldberg pertaining to the status of the proposed changes in the Federal Minimum Wage legislation.

Dan Lieblich discussed the matter of collection of lineage and price statistics from bowling operators by Dunn & Bradstreet and advised that Brunswick, which had formerly paid D & B $25,000 per annum for this service, had discontinued it; that D & B was ready to continue the service for all BPAA members if BPAA would pay $15,000 per annum for the service and urge all of its members to participate on a confidential basis; that he had contacted Brunswick about the matter and that Brunswick had agreed to contribute $7500 toward the cost of another year's service and that AMF agreed to contribute $2500 additional; that the averages for each state would then be made available to each participating member who would send in his information to D & B. Mr. Lieblich urged that we ask the Board of Directors of BPAA to pay small difference and retain D & B for another year's service. It was agreed by all to recommend the same to the Board of Directors.

There was a long discussion about Brunswick's activities in its BCO division in the extent of the competition of its approximately 200 bowling centers now in operation. Ed Goldberg also discussed the effect of AMF keeping competition alive which might otherwise go under by reason of its credit and payment-moratorium policies. It was suggested that this matter be brought up at the Board of Directors meeting.

Nick Mormando, Chairman of the By-Laws Committee reported on the activities of the By-Laws Committee and its consideration of a new set of By-Laws for the BPAA.

There was a general discussion of the proposal of John Brown of Great Lakes Bowling Corp. that the BPAA By-Laws be amended to provide that all per-lane dues and assessments of all members be limited to a

BC 20 (2 pages)

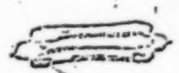
PX 59

PLAINTIFF'S EXHIBIT P-59 C 565-11

HCS

BCOD SUMMER BOWLING FESTIVAL

19 Junior Friendship Days at 65



3 Games, Shoes, Hot Dog, Coke—$1

Good EVERY Saturday, May and June, 1965.

Good EVERY Monday and Friday, July and August, 1965.

No limit to number of these tickets you can buy & use on Junior Friendship Days.

• • •

Here's how to use it:

1. Pay for ticket at Control Desk. Fill our Registration Card.
2. Play your three games. Control Desk holds ticket while you play.
3. Return your score sheets to Desk and exchange them for your ticket.
4. Take ticket to Snack Bar for your Hot Dog & Coke.
5. Sign back of ticket and drop it in Junior Friendship Prize Box for your chance to receive a valuable prize at End-of-Season Prize Drawing.

• • •

Then for more Fun — Buy another ticket and "Go Round Again!"

Tickets are non-transferable and good only at House where issued.

A1740
Exhibit P59

PX 60

PLAINTIFF'S EXHIBIT P-60 C 565-11 4/3/73

YOUR

SUMMER BOWLING FESTIVAL OF FUN

Bankowski's Circle Lanes

PICTURE THE FUN YOU CAN HAVE KEEPING COOL THIS SUMMER PARTICIPATING IN OUR SUMMER BOWLING FESTIVAL

We Are Pleased To Offer You The Following Programs!

- ALL TYPES OF SUMMER LEAGUES FOR THE BEGINNER AS WELL AS THE EXPERIENCED BOWLER—FOR MOTHER, DAD, AND THE KIDS.
- FREE OPEN PLAY COUPON BOOKS—EACH WORTH $5.00—FOR EACH OF OUR 64-65 WINTER LEAGUE BOWLERS!
- FREE OPEN PLAY COUPON BOOKS—EACH WORTH $5.00—FOR EACH BOWLER ENJOYING ONE OF OUR 1965 SUMMER LEAGUES.
- EVERY SATURDAY DURING MAY & JUNE AND MONDAY & FRIDAY DURING JULY & AUGUST WILL BE JR. FRIENDSHIP DAY—3 GAMES, HOT DOG, COKE AND SHOES—$1.00!
- EVERY DAY IS FAMILY DAY—MAY THRU SEPT.—REDUCED RATES FOR JUNIORS BOWLING WITH PARENTS AT ALL TIMES.
- ADULT PRACTICE DAZE—MAY THRU SEPT. FRIDAYS 9:30-11:30 OR 1:00-3:00—BOWL AS MANY GAMES AS YOU WISH FOR THE TOTAL PRICE OF 3 GAMES FOR $1.00—MINIMUM 3 PER LANE—FREE INSTRUCTIONS AVAILABLE.
- KIDS! CELEBRATE MOTHERS DAY AND FATHERS DAY BY BRINGING YOUR PARENTS TO BOWL AS YOUR GUEST. YEP! THEY BOWL FREE WHEN THEY BOWL WITH YOU!—ALSO WATCH FOR THE SPECIAL PARENT-CHILD TOURNAMENTS WITH TROPHIES TO THE WINNERS.
- SPECIAL SHOWS AND EVENTS WILL BE FORTHCOMING FOR YOUR CONSTANT ENJOYMENT OF AMERICA'S MOST POPULAR YEAR ROUND RECREATION!

WINTER AND SUMMER
IT'S FUN TO BOWL!!
At Our Air-Conditioned Lanes.

"A Picture Perfect Summer"

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A1741
Exhibit P60

PX 61

PLAINTIFF'S EXHIBIT
P-61
C.5915-1.6
4/3/73

Brunswick the FIRST Name In Bowling IS Remodeling, IS Modernizing Equipment, and WILL Operate Brunswick Bowlero Lanes,

7065 Broadway, Lemon Grove

Call 465-7733 or 465-7734 To Make Or Confirm Fall Reservations For . . . Leagues --- Teams --- Individuals.

- THE ULTIMATE IN SERVICE
- THE FINEST LANE CONDITIONS
- THE FRIENDLIEST ATMOSPHERE

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--- Where Service Means Pleasing YOU!

A1742
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NASSAU BOWLING PROPRIETORS ASSOCIATION

180 RADCLIFF DRIVE SOUTH, EAST NORWICH, N. Y.

OFFICE OF THE EXECUTIVE DIRECTOR
FRED RIDOLF

WA 2-4293
WA 2-5019

PX 62

Wilt Rudo
PG Kudlen

April 16, 1965

Mr. John L. Hanigan, President
The Brunswick Corporation
623 South Wabash Avenue
Chicago, Illinois

Dear Mr. Hanigan:

Our Association views with alarm and deep concern the assumption by the Brunswick Corporation of the ownership and operations of certain bowling establishments.

excised

In view of the fact that the Brunswick Corporation is a major manufacturer of the pinsetter and other equipment, which are so vital to the operations of bowling centers, we feel that the entrance of a major manufacturer into the operational phase of the bowling industry, is unfair competition and not in the best interests of the public.

We would appreciate a policy statement of your company's position on this matter at your earliest convenience.

Sincerely,

Richard A. Davis

Richard A. Davis,
President

PL. EX-93 cd.

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APR 19 1965
PRESIDENT'S OFFICE

A1743
Exhibit P62

PX 63

Brunswick CORPORATION
EXECUTIVE OFFICES

May 3, 1965

Mr. Richard A. Davis, President
Nassau Bowling Proprietors Association
188 Radcliff Drive South
East Norwich, New York

Dear Mr. Davis:

Mr. J. L. Hanigan has referred to me your letter of April 16, 1965 for reply.

Neither the Nassau Bowling Proprietors Association nor any other proprietors association or individual proprietor have any legitimate cause for alarm or concern over the operation by Brunswick Corporation of a relatively few bowling establishments.

Regrettably, certain establishments fell far behind in their payments to Brunswick with delinquencies reaching such magnitude that Brunswick had no alternative but to repossess the equipment and attempt to minimize its losses as a creditor. In this posture the most prudent measure that could be taken in certain instances was for Brunswick to then assume the operation of the establishment on a salvage basis and attempt to bring it back to the point where it could stand on its own feet. During the course of salvage and at an appropriate point Brunswick will consider responsible offers to sell the establishment as a going business. We know of no other way to protect the interests of our stockholders and the measures we have taken have been done so out of necessity.

Any implications or innuendoes in your letter that Brunswick has done or will do anything illegal, unfair or not in the best interests of the public, are emphatically and categorically denied.

During its period of salvage operations Brunswick intends to be a good proprietor, follow commercially acceptable methods of operation, and conform to the laws of the land.

If you have any specific complaint or wish to write us further, please feel free to do so.

PL. Ex. 95 id

Sincerely,

Milton Rudo

MR:EOC
cc: Mr. J. L. Hanigan

623 SOUTH WABASH AVENUE / CHICAGO, ILLINOIS 60605 U.S.A. / TELEPHONE 312-939-3000

PX Rudo # 11 id 6/14/68

A1744
Exhibit P63

5 (a)

Entire plan - no produced

PX 64

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

CONFIDENTIAL

marked at Benninger deposition as Plaintiffs' Benninger Ex. 8 for id.

PL EX 60 id

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pages 0 through 88

A1745
Exhibit P64

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

FOREWORD

The Brunswick Center Operations Division has been in existence since January 1, 1965. It was established primarily for the purpose of evaluating, acquiring and profitably operating bowling establishments that are in distress, and thereby delinquent in payment of their equipment accounts.

During the eight-month life of the Division, we have been engaged almost 100% in performing the above objectives. However, in so doing, we have acquired some basic concepts of the potential this Division can attain in the near future.

The following 5-Year Plan is a summary of the concepts and objectives we now see for the BCO Division. As can be expected, some of the objectives are just past the idea stage. Our plans for the idea objectives are to investigate them thoroughly in the next few years to determine their benefits for the Division and the Brunswick Corporation.

The legal and financial aspects of the Canadian and International operations of this Division will be reported and recorded separately according to law. However, for purposes of the 5-Year Plan, they are included as a part of the BCO Division.

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Exhibit P64

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

TABLE OF CONTENTS

SECTION A - OBJECTIVES

SECTION B - PLANS

Parts 1 through 19 are plans to meet the respective 19 objectives listed in Section A.

SECTION C - PERSONNEL SUMMARY

SECTION D - INVESTMENT SUMMARY

SECTION E - FINANCIAL SUMMARY

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A1747
Exhibit P64

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

A - OBJECTIVES

The objectives for the BCO Division for the next five years are as follows:

1. To become the domestic, Canadian and International Retail Operating Division for Brunswick Corporation.

2. To obtain and operate retail bowling establishments that are in distress, thereby creating a favorable cash flow within the first year, and a Division profit within three years. Rate of establishments to be obtained is:

	Domestic	Canadian
1965	105 establishments	30 establishments
1966	75 establishments	20 establishments
1967	75 establishments	10 establishments
1968	25 establishments	10 establishments
1969	25 establishments	10 establishments
1970	25 establishments	10 establishments

Eventually we should control 5% of the domestic and Canadian Brunswick bowling market. These establishments will be available for sale to private interests as a profitable business.

3. To promote the bowling industry as a whole, increasing interest, participation, and improving the image of bowling.

4. To enter the vending business beginning in the year 1968. To vend such products as food, cigarettes, music, etc.

5. To enter the real estate field whereby we purchase and develop the real estate involved with bowling establishments for use in developing retail outlets beginning in the year 1970.

6. Operate a billiard establishment, wherever possible, in conjunction with bowling operation. Program and promote this business, which should set standards in the industry much the same as bowling.

A1748
Exhibit P64

A - OBJECTIVES

7. Operate retail pro shop in each bowling establishment. In addition to selling consumer merchandise, such as bowling balls, bags and shoes, sell other recreational and sporting goods supplies and equipment as can be profitably handled.

8. In time, and if there is a concentration of bowling establishments, act as a service station for other proprietors in area - spare parts and pro shop needs.

9. Take lead in individual markets to promote and develop bowling market by working with independent operators.

10. Cooperate fully with Bowling Division, with Proprietor organization, and all integers of bowling industry.

11. Cooperate with Bowling Division by having B.C.O. houses available to test products that they might develop and advise Bowling Division of information obtained as it pertains to products, market development, etc.

12. Create an organization that can supervise the operation of snack bars, restaurants, and liquor bars on a nationwide scale and on a profitable retail basis. The controls and promotion of this operation will be the responsibility of this department.

13. Industrial Relations Department will set up an organization chart and help to staff this organization based on the needs of the Division. It will plan the needs for training, handle labor relations and personnel relations and set up standards for the continued improvement of the quality of the personnel of the Division.

14. The Service and Maintenance Department should organize a supervisory and auditing organization as it pertains to maintenance of all equipment in a bowling establishment, including the real property. It should set up the necessary manuals, policies and programs to insure an efficient, low-cost operation. A Standards program on all aspects of maintenance and supplies should be organized and in operation during the next five years.

15. This Division will look at all aspects of indoor recreation to be used to increase revenues in each establishment. Consideration and tests will be set up for such items as indoor golf, archery, Carom Bowl, etc.

A1749
Exhibit P64

A - OBJECTIVES

16. To provide a franchise arrangement for the bowling industry beginning in the year 1967. This franchise would include a planned marketing package, maintenance and service programs, management, consulting, and auditing services, as well as site evaluation and personnel selection and training.

17. To provide an installment credit plan which will enable the pro shop outlets to sell on a credit basis, thereby increasing sales.

18. To provide for a Division Management Information System.

19. To set standards for the bowling industry in establishing profitable retail operation.

    a. Standards to include marketing, pricing and promotions.
    b. Management - profile and training of personnel.
    c. Proper accounting systems and controls.
    d. Proper maintenance and service programs for a bowling establishment.
    e. Standards of a bar and restaurant operation in a bowling establishment.

B - PLANS FOR MEETING OBJECTIVES

The following information is supplied to detail the plans for meeting the objectives listed in Section A.

While some of these objectives are in a very primary state, the plans for attaining the objectives may include studies and programs to determine if the objective is a suitable one for the Division. In these instances, the financial impact may be very vague or unknown at this time, in which case they are not reflected in the financial summary appearing in Section E.

Each part of Section B corresponds to the same objective number listed

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B - PLANS FOR MEETING OBJECTIVES

Objective No. 1

"TO BECOME THE DOMESTIC, CANADIAN AND INTERNATIONAL RETAIL OPERATING DIVISION FOR BRUNSWICK CORPORATION."

a. During 1965 we plan to acquire and operate 105 bowling establishments in the United States and 30 in Canada. This number is based on the list that we have received from the Credit Department. During 1965 we should have all key positions of the Division staff filled. Our staff should be able to handle additional houses at very little additional expense. During 1965 many of the personnel on the staff will become experienced in the operation of this Division. The basic organization chart should be able to handle two to three times the number of establishments we will have at the end of this year. Also, we will have trained as bowling center managers at the end of this year approximately 96 men.

b. By the end of 1966 we should be prepared to move worldwide in operating bowling establishments if there is a Corporate need. The personnel should become experts in their field, particularly the staff members, and with this additional year of experience, we should be able to take on additional assignments throughout the world if necessary.

c. By 1967 this Division should be prepared to operate other retail establishments such as marinas, golf courses, and so forth in the United States. As we grow in the various staff positions, our people should become expert in the operating of retail recreational establishments. In 1967 we should be prepared to handle other retail operations if the company deems it necessary. Based on this premise, we would train personnel and experiment in 1967 with a small operation of marinas and golf courses.

d. In 1968 we should have a staff nucleus operating and trained to go anywhere in the world. This means that in the year 1968 we should be able not only to expand in the United States, but, operating other types of retail establishments, go to other countries and to other continents with the same type of operation. We would continue to expand this operation during the years 1969 and 1970 with wider coverage for the retail recreational establishments, as well as any other type of business which the corporate may deem necessary for this Division.

A1752
Exhibit P64

B - PLANS FOR MEETING OBJECTIVES

Objective No. 2

"TO OBTAIN AND OPERATE RETAIL BOWLING ESTABLISHMENTS THAT ARE IN DISTRESS, THEREBY CREATING A FAVORABLE CASH FLOW WITHIN THE FIRST YEAR, AND A DIVISION PROFIT WITHIN THREE YEARS. RATE OF ESTABLISHMENTS TO BE OBTAINED IS:

	DOMESTIC	CANADIAN
1965	105 ESTABLISHMENTS	30 ESTABLISHMENTS
1966	75 ESTABLISHMENTS	20 ESTABLISHMENTS
1967	75 ESTABLISHMENTS	10 ESTABLISHMENTS
1968	25 ESTABLISHMENTS	10 ESTABLISHMENTS
1969	25 ESTABLISHMENTS	10 ESTABLISHMENTS
1970	25 ESTABLISHMENTS	10 ESTABLISHMENTS

EVENTUALLY WE SHOULD CONTROL 5% OF THE DOMESTIC AND CANADIAN BRUNSWICK BOWLING MARKET. THESE ESTABLISHMENTS WILL BE AVAILABLE FOR SALE TO PRIVATE INTERESTS AS A PROFITABLE BUSINESS."

a. The scope of our activities will include the United States and Canada.

b. Method

A feasibility study of all distressed bowling centers will be made including the study of market, site, physical plant, competition, management, and an internal audit of accounting records. From the information gathered, a decision will be made as to the feasibility of acquiring the bowling center. In positive situations, negotiations with the landlord and all other secured creditors will proceed in order to obtain the best possible terms for Brunswick to operate. Any establishments to be acquired must fall within the criteria established by the Advisory Board for our division. After all negotiations have been concluded, the establishment will be acquired by the Acquisition section. This latter group will also be responsible for keeping records on expiration dates on leases, licenses, taxes, etc.

As short term leases begin expiring and we give consideration to entering into long term leases, a further evaluation will be made. This evaluation will be predicated upon the actual operation under BCO

A1753
Exhibit P64

Objective No. 2 - cont'd

and the possibilities for further improvement based on market improvement, competition, and further rental concessions on the part of the landlord.

In mid-1966 a team of men will be assigned to look at potential markets for new installations of used equipment. In those cases where such an analysis indicates favorable market conditions, good site availability and limited competition, and where private capital is not readily available to make the necessary investment, we will take the necessary steps to secure the property for the building of a Brunswick-operated center. This effectively will put us in a position where we will be able to control the distribution of our capital equipment and sell off, or franchise, going businesses to sound investors. Consideration will be given to locating such new centers as interceptors to outlying competitively equipped bowling establishments where such an installation would prove profitable to Brunswick.

In subsequent years, 1967 and after, an additional team of men will be assigned to develop new locations for BCO.

c. Productivity

Beginning in late 1964 we began evaluating distressed bowling centers to determine the feasibility of Brunswick operation. From these evaluations comes the input of Brunswick-operated centers. Based on the input figures of distressed establishments provided by Installment Credit, we are assuming the number of evaluations to be completed in each of the next five years and the number of Brunswick centers which will result from these evaluations. In addition, we are listing the number of new establishments which will be developed during this period of time.

Objective No. 2 - cont'd

UNITED STATES

	Evaluations	Acquisition from Evaluation	New Locations	Total
1965	250	105*	-	105*
1966	215	70	5	75
1967	120	60	15	75
1968	50	10	15	25
1969	50	10	15	25
1970	50	10	15	25

* Includes 26 AIBC establishments taken over.

CANADA

1965	60	30	-	30
1966	40	20	-	20
1967	20	10	-	10
1968	10	5	5**	10
1969	10	5	5**	10
1970	10	5	5**	10

Beginning in [illegible] of Brunswick operation. From these

** New installations may be developed by taking over non-automated establishments and automating same with equipment out of warehouse.

d. Manpower

As conditions change and the input of distressed establishments slows down, it will be necessary to divert people to the evaluation of new sites. It will also be necessary to maintain a nucleus of real estate and financially orientated people to re-evaluate bowling centers prior to Brunswick commitment on a long term lease. Nevertheless, as skills become sharpened, it is apparent that economies can be accomplished in manpower. On a long term basis, this department will develop into a real estate acquisition group for the division and perhaps for the corporation. Following is an estimate of the number of management personnel required in each of the next five years. It is

B - PLANS FOR MEETING OBJECTIVES

Objective No. 2 - cont'd

assumed, of course, that these men will be supported by the proper complement of clerks and secretaries.

	Evaluation	Acquisition	Canada		Total
1965	12	4	4	=	20
1966	12	4	4	=	20
1967	10	4	2	=	16
1968	8	2	2	=	12
1969	8	2	2	=	12
1970	8	2	2	=	12

e. Personnel Development

An aim of this department will be the development of personnel into areas of maximum usefulness to the Division. Those individuals who demonstrate leadership and aggressiveness will be exposed to operational procedure in order to provide a pool from which to draw future district managers. Those individuals who possess the highest degree of real estate and financial ability will be retained as the nucleus of the Divisional or Corporate Real Estate Department.

Steps toward development are underway at this time. The key men have all been given full supervisory authority over a limited number of people in order to observe and assist in their development.

f. By-Products of Management Services

While evaluating and acquiring bowling centers for the Division, certain by-products are developed. These are:

i) The evaluation of all distressed establishments which assists in determining their ultimate disposition.

ii) The protection of Corporate Receivables, Reserve and establishe pricing policy by adding muscle to the collection effort.

iii) Assistance to the Bowling Division by uncovering and developing

A1756
Exhibit P64

B - PLANS FOR MEETING OBJECTIVES

Objective No. 2 - cont'd

iv) Assistance to the Credit Department in preparation of feasibility studies prior to extension of future installment credit.

v) Reducing warehouse inventories of used equipment through installation at new sites.

vi) Developing market and financial criteria which can be used as sales aids by the Bowling Division.

vii) Potential use as a Consulting Service for the bowling industry.

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A1757
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B - PLANS FOR MEETING OBJECTIVES

Objective No. 3

"TO PROMOTE THE BOWLING INDUSTRY AS A WHOLE, INCREASING INTEREST, PARTICIPATION, AND IMPROVING THE IMAGE OF BOWLING."

a. Programs

i) To promote bowling for the entire industry by operating successful BCOD establishments, testing new ideas for the bowling industry as a whole, and providing successful ideas to other proprietors.

ii) To improve the image of bowling as a respectable recreation in a business conducted by high level, respected, and well-financed operations.

iii) To develop open play participation in the fall and spring seasons comparable to the winter in Brunswick-operated centers.

iv) To increase summer participation of bowling by 50% by 1970 - a yearly increase of 10% a year in 1966 through 1970.

v) To stimulate league play to solid early evening and night-time participation by men, women, industrial, church, mixed and senior groups, and to develop double shift leagues within three years after taking over any establishment.

vi) To build the daytime ladies' participation to full use of the equipment during school hours - each house with 60% utilization each week on a shift basis by 1970.

vii) With the consistent development of junior bowling in establishments, schools and colleges, it is desired to build a solid base of 100,000 junior participants per year between the ages of eight and eighteen by well supervised and organized programs by 1970.

viii) To create an interesting, active, well-planned program for senior citizens (age 55 and over) in league and tournament play, and to have at least one senior league in each house by the end of 1967 and two leagues by 1970.

ix) To maintain BCOD establishments in a fine operating condition, constantly watching service methods, improving and modernizing

Objective No. 3 - cont'd

the equipment to the latest standards, thus bettering the image and customer relations in BCOD centers.

x) To promote tournaments, T.V. shows, etc. with bowling proprietor houses and to assist in promoting seminars and training sessions with these proprietors.

xi) To recognize the small ball game, its potential and the development of similar promotion programs as used in ten pins.

b. Plans

i) Hire during the 1965-1966 season a competent promotion man for the Division to supervise plans for each year.

ii) During 1965, early 1966, promotion marketing plans have been and will be developed to have planned promotion programs for our establishment managers to use. Namely:

1) Junior Bowling Manual
2) Tournament Manual
3) General Promotion Manual
4) Promotion Procedure Manual
5) Summer Program Manual
6) Senior Citizen Promotion Manual

iii) To work closely with the Bowling Division to test their market promotion plans, ideas, and provide accurate figures for their use.

iv) BCO Division will provide accurate and up-to-date lineage figures of their various operations in different sections of the country for use by the Bowling Division to assist in their determination of the economic conditions in bowling markets. In addition, these figures will be useful as a guide to what geographic markets need promotion assistance from a proprietor and Brunswick management determination.

v) It is the intent of the Division to work closely during 1965 and 1966 to assist the American Bowling Congress and Women's

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B - PLANS FOR MEETING OBJECTIVES

Objective No. 3 - cont'd

International Bowling Congress in the promotion and sanctioning of Children's leagues by meeting and programing for them.

vi) During 1966 and 1967 it is planned to work closely with the Life-time Sports Foundation, the National High School Federation and other interest youth groups to help develop a solid Junior Secondary School Program and to gain better acceptance by the public schools for both in-school and after-school bowling programs.

vii) During 1966 and early 1967 a format and the initiation of a national junior tournament event will be developed for children. This event will meet the sanctioning specifications of the National High School Federation. OUT

viii) During 1966 the birthday party program for youngsters will be refined and promoted on a grand scale at each of our centers. This promotion package will be available for use by the Bowling Division in its annual presentation to the general proprietor membership.

ix) During 1966-1967 a planned program will be instituted for Senior Citizen promotion which would include awards, tournaments, and leagues for use in BCOD establishments.

x) A National Tournament will be held in the spring of 1966 for all of our houses using the high game rolled in each house, each month. A final roll-off will be held in each place by class, and a National Tourney in a site to be determined. To be refined in 1967, with a start to make this tournament of tremendous national importance by 1970.

xi) A League Officer's Portfolio will be introduced in the fall of 1965 to all BCOD leagues bowling in the establishment. This book will be developed with scoring tips, rules of etiquette, and other data sheets to assist the league officers in their carrying out of responsibilities.

xii) The Star Bowler Program of the Bowling Division will be implemented where needed in the BCO establishments. During late 1965 and early 1966 one of the key star-bowlers, Chief Halftown,

Objective No. 3 - cont'd

will be used extensively in the development of youth programs and to assist in gaining a foothold in many public school systems. During 1967 and 1968, develop this program to exploit bowlers in developing the business.

xiii) Active employment of the Learn to Bowl and League Sales kits and programs in addition to our material used with these activities will be improved during 1966. By 1967, we should have experts in this field.

xiv) Active participation with Bowling Proprietor organizations in specific selected promotions on T.V., newspaper, and radio will be encouraged and developed during 1966.

xv) BCO Division intends to use during 1966 and 1967 seasons the radio and television clips developed by the Bowling Division in specific markets to help stimulate the desire for open bowling. Many cities like Providence, Baltimore, Miami, etc. are natural areas where the Division has large clusters of houses and the costs can be spread, besides helping to build not only the BCO market but the independent proprietor lineage. During 1968, 1969, and 1970 we should further exploit these media for bowling if found to be successful.

c. Test Promotions

i) Carom Bowling - During 1966 the Division will test this new form of bowling in a few select houses.

ii) A thorough investigation will be conducted during 1966 into the use of closed circuit television for use during instruction classes and to stimulate open play practicing.

iii) During 1967 the Division will test the Indoor Golf game in its bowling establishments.

iv) During 1968 the Division will test automatic scoring devices in the promotion of business.

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B - PLANS FOR MEETING OBJECTIVES

Objective No. 3 - cont'd

d. Bowling Image Building Plans

i) Steps are being taken during the fall of 1965, and in the ensuing years, to raise the price of bowling, rental shoes, lockers and other retail aspects rented or sold in our centers.

ii) In conjunction with building the lineage in the establishments and creating a good image, constant observation, vigilance and action to repair, modernize and replace worn equipment and fixtures will be carried out.

iii) A planned program of up-dating our bowling equipment in converting to A-2's, changing from Crown Imperial design to the Gold Crown fixtures, will be carried on from 1965 to 1969.

iv) The A-2 conversions in the better houses and certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the Bowling Division sales.

v) By 1968, the Division will have completely developed a building and business image for its bowling centers.

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

D - INVESTMENT SUMMARY

The attached investment summary includes certain major expense items such as resurfacing, data processing and computer rental, air conditioning maintenance, and decorating expenses. While these are not considered capital items and are included as expenses in our profit and loss statement, they are of such a magnitude that we included them as major expenses in our 5-Year Plan.

All of the amounts are shown at list price on the attached schedules. However, for purposes of cash flow, we are using 50% of the list price for those items purchased from the Bowling Division. Therefore, for the projected expenditures for cash flow, the following schedule should be used for the period 1966 through 1970 for capital items only. (000 omitted)

Est. timing of expenditure	1966	1967	1968	1969	1970
Capital Items as Shown at List	$2,359	$3,020	$2,696	$2,429	$2,063
Deduction for Brunswick Items @ 50% of List -					
Modernization Equipment	$ 84	$ 84	$ 29	$ 29	$ 29
A-2 Conversion Kits	985	1,196	1,049	938	856
Billiard Tables	5	5	5	5	5
Total Deduction	$1,074	$1,285	$1,083	$ 972	$ 890
Cash Flow Outlay for Capital Items	$1,285	$1,735	$1,613	$1,457	$1,173

The expense involved in resurfacing is also shown at list price. Since this service will be performed by Brunswick, it too includes an element of profit and fixed expenses which do not require cash outlay. However, this item was shown as an operating expense to the BCO Division at full list price.

BCO DIVISION
BRUNSWICK CORPORATION
5-YEAR PLAN
1966 - 1970

E - FINANCIAL SUMMARY

Addendum to Financial Statements

a. We have made the following assumptions for the 5-year profit and loss reports for the domestic operation.

1) Revenue was on the basis of 8,500 lines in 1965 and with the following increases per year:

1966 - 2.4% to 8,700 lines
1967 - 3.4% to 9,000 lines
1968 - 3.3% to 9,300 lines
1969 - 1.0% to 9,400 lines
1970 - 1.0% to 9,500 lines

2) The revenue per line was at 68.25 cents in the 15-year forecast. Therefore we used this rate for 1966, and increased the restaurant, bar, snack bar, billiards and pro shop portions at the rate of 3% per year for the years 1967 through 1970, while leaving the bowling portion constant at $0.50 per line. The bowling portion is for lineage revenue, and shoe and locker rentals.

Our year-to-date actual revenue per line is 70 cents. However, it was felt that this was not enough experience to change the amount used in the 15-year forecast. Our rate per line for the 5-year forecast is as follows:

1966 - 68.25 cents
1967 - 68.00 cents
1968 - 69.36 cents
1969 - 69.94 cents
1970 - 70.54 cents

3) Operating expense was shown at the same rate per line as was used in the 15-year forecast.

BCOD CENTERS OPERATING AT A NET LOSS
COMPARISON FOR INDIVIDUAL PROPRIETORS IN PARENTHESIS

P65th

Sheet #	1965	1966	1967	1968	1969	1970	1971	1972
1	12	7(11)	6(10)	5(9)	2(7)	1(4)	0(2)	1(1)
2	10	5(9)	6(9)	4(8)	3(6)	3(6)	3(5)	2(5)
3	12	8(14)	5(12)	5(12)	5(11)	0(7)	1(8)	1(8)
4 --	14	11(14)	10(14)	7(11)	4(9)	3(8)	1(5)	1(6)
5	14	12(14)	10(13)	7(12)	3(7)	3(6)	1(4)	1(3)
6	13	11(14)	10(13)	9(10)	4(9)	2(7)	2(6)	1(5)
7	10	9(11)	7(10)	5(9)	3(7)	0(5)	2(4)	1(1)
8	10	10(13)	9(12)	7(11)	7(9)	2(7)	2(4)	1(2)
0	8	12(14)	10(11)	5(5)	4(5)	3(5)	0(3)	0(2)
10	1	8(10)	7(11)	7(10)	6(10)	3(6)	2(3)	1(4)
11		12(12)	6(14)	7(12)	3(9)	2(7)	2(4)	1(4)
12		11(11)	8(11)	10(11)	8(9)	5(8)	4(7)	1(5)
13		2(2)	12(14)	9(12)	6(10)	2(7)	3(7)	2(6)
14		--	7(7)	8(11)	3(9)	4(9)	0(4)	1(4)
15		--	--	5(5)	13(14)	9(11)	4(7)	5(8)
16		--	--	--	1(1)	5(6)	3(8)	5(6)
17		--	--	--	--	--	--	--
	104	118 (149)	113 (161)	100 (148)	75 (132)	47 (109)	30 (81)	25 (70)
BCOD Centers Operating	127	173	182	181	172	173	175	179
% of BCOD Centers Operating At Net Loss	82%	68%	62%	55%	44%	27%	17%	14%
% of Centers that would operate at a loss in the hands of independent Proprietors		86%	88%	82%	77%	63%	46%	39%

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PLAINTIFF'S EXHIBIT P-66

PROFIT OR LOSS - STATEMENT PAGE NO. 1 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
****GROSS REVENUE****													
TEN PIN REVENUE													
TEN PIN AD LGE REV	31010100	17522	38.7	14791	35.7	15827	39.7	137022	38.3	134427	37.1	127476	37.4
TEN PIN AD OPEN REV	31010200	7877	17.4	9590	23.2	6179	15.5	69567	19.4	81657	22.5	75289	22.1
ADULT SPECIAL	31010201	228	5	257	6	252	6	2374	7	2470	6	1167	3
ADULT TOURNAMENT	31010202	1				107	3	5658	1.6	368	1	504	1
TEN PIN JR LGE REVEN	31010300	3592	7.9	2376	5.7	3220	8.1	23956	6.7	21162	5.8	23163	6.8
TEN PIN JR OPEN REV	31010400	1664	3.7	2204	5.3	1949	4.9	12150	3.4	15651	4.3	14669	4.3
JUNIOR SPECIAL	31010401	20		110	2	15		1406	4	2318	6	1177	3
JUNIOR TOURNAMENT	31010402	238	5	337	8	331	8	767	2	3127	8	333	1
SCHOOLS	31010403	711	1.6	220	5	510	1.3	1796	5	665	1	1745	5
TOTAL TEN PIN REVENUE		31853	70.4	29885	72.3	28390	71.3	254696	71.2	261845	72.4	245523	72.0
TOTAL BOWLING REVENUE		31853	70.4	29885	72.3	28390	71.3	254696	71.2	261845	72.4	245523	72.0
SHOE RENTAL													
SHOE RENTAL REV	32010100	1225	2.7	1250	3.0	1031	2.6	8993	2.5	10513	2.9	9708	2.8
LOCKER RENTAL REV	32010200	6		55	1	1		397	1	484	1	467	1
TOTAL SHOE RENTAL		1231	2.7	1305	3.2	1032	2.6	9390	2.6	10997	3.0	10175	3.0
PRO SHOP													
PRO SHOP REVENUE	32020100	976	2.2	388	9	1197	3.0	5117	1.4	4040	1.1	4540	1.3
SHIRT SALES	32020300			160	3	51	1	1054	3	1347	3	493	1
TROPHY SALES	32020400			191	4			1076	3	1611	4	1874	5
BALL PLUG & REPAIR	32020600	16				6		155				66	
TOTAL PRO SHOP		992	2.2	739	1.8	1254	3.1	7402	2.1	6998	1.9	6973	2.0
VENDING MACHINES													
ICE CREAM REVENUE	33010400							42					
	33010500											8	
SNACK VENDING MACHIN	33010600	494	1.1	67	1			3433	1.0	671	1	395	1
BALL CLEANING MACHIN	33010900	21		20		16		142		179		132	
GAME & MISC. MACHINE	33011000	3		2		3		19		23		25	
LUSTRE KING MACHINE	33011100	118	3	91	2	111	3	872	2	812	2	757	2
BOWLERS AID REVENUE	33011200	66	1	79	1	88	2	774	2	720	1	682	2
TOTAL VENDING MACHINES		702	1.6	259	6	218	5	5282	1.5	2405	7	1999	6

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FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 2 DECEMBER 1972 PROGRAM LP080-C2

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
OTHER RECREATIONAL	33020500											700	2
MISCELLANEOUS INCOME	33029900	63	1	96	2			178		1000	2	163	
TOTAL OTHER RECREATIONAL		63	1	96	2			178		1000	3	863	3
BAR REVENUE													
LIQUOR REVENUE	34010100	3872	8.6	2294	5.5	2544	6.4	23947	6.7	19114	5.2	19124	5.6
DRAFT BEER REVENUE	34010200	1041	2.3	1119	2.7	912	2.3	7641	2.1	9381	2.5	8849	2.6
BOTTLE BEER REVENUE	34010300	1279	2.8	625	1.5	961	2.4	9238	2.6	7500	2.0	6825	2.0
TOTAL BAR REVENUE		6192	13.7	4038	9.8	4417	11.1	40826	11.4	35995	10.0	34798	10.2
FOOD REVENUE													
FOOD REVENUE	34020100	4157	9.2	4286	10.3	3388	8.5	34677	9.7	35990	9.9	33461	9.8
TOTAL FOOD REVENUE		4157	9.2	4286	10.4	3388	8.5	34677	9.7	35990	9.9	33461	9.8
TOTAL FOOD AND BEV. REVENUE		10349	22.9	8324	20.1	7805	19.6	75503	21.1	71985	19.9	68259	20.0
COMMISSIONS REVENUE													
COMM. VENDING MACHIN	35020100	67	1	696	1.6	1101	2.8	5161	1.4	6252	1.7	6895	2.0
COMM. TELEPHONE	35020200			31		39	1	217	1	240		223	1
TOTAL COMMISSIONS REVENUE		67	1	727	1.8	1140	2.9	5378	1.5	6492	1.8	7118	2.1
TOTAL TOTAL GROSS REVENUE		45257	100.0	41335	100.0	39839	100.0	357829	100.0	361722	100.0	340910	100.0
****COST OF GOODS****													
PRO SHOP COST													
PRO SHOP COSTS	42020100	43	4.3	233	60.0	878	73.4	3457	67.5	2425	60.0	2734	60.2
SHIRT COSTS	42020300	383		120	75.0	113	223.4	873	82.7	1012	75.1	247	49.9
TROPHY COSTS	42020400			115	60.2	147		609	56.5	967	60.0	1226	65.4
TOTAL PRO SHOP COST		426	42.9	468	63.3	1138	90.7	4939	66.7	4407	62.9	4207	60.3
VENDING COST													
SOFT DRINK COST	43010100												

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
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PROFIT OR LOSS - STATEMENT PAGE NO. 3 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY. CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
SNACK VENDING MACH CST	43010600	188	38.0	37	55.2	10		1474	42.9	370	55.1	118	29.8
CIGAR MACHINE COST	43010800							12					
BOWLERS AID COSTS	43011200	119	181.0	51	64.5	303	8	317	41.0	469	65.1	967	3
TOTAL VENDING COST		307	43.7	88	33.9	313	143.5	1809	34.2	839	34.8	1085	54.2
BAR COST													
LIQUOR COSTS	44010100	1189	30.7	505	22.0	762	29.9	5591	23.3	4206	22.0	4368	22.8
DRAFT BEER COSTS	44010200	376	36.1	325	29.0	443	48.5	2320	30.3	2722	29.0	2727	30.8
BOTTLE BEER COSTS	44010300	483	37.7	219	35.0	323	33.6	2800	30.3	2628	35.0	1906	27.9
TOTAL BAR COST		2048	33.0	1049	25.9	1528	34.5	10711	26.2	9556	26.5	9001	25.8
FOOD COST													
FOOD COSTS	44020100	1376	33.0	1500	34.9	1111	32.8	10634	30.6	12597	35.0	11266	33.6
TOTAL FOOD COST		1376	33.1	1500	34.9	1111	32.7	10634	30.6	12597	35.0	11266	33.6
TOTAL FOOD AND BEV. COST		3424	7.8	2549	6.3	2639	6.8	21345	6.1	22153	6.2	20267	6.1
TOTAL TOTAL COST OF GOODS		4157	34.5	3105	33.3	4090	44.0	28093	31.8	27399	33.6	25559	33.0
FIXED & CNTRL EXP.													
RENT EXPENSE													
RENT BUILDING	66010100	3385	7.5	3385	8.1	3385	8.5	35208	9.8	35204	9.7	35213	10.3
RENT-LEASED EQUIPT	66010200							37				105	
RENT-BAR CORPS	66010400							1250-	4				
TOTAL RENT EXPENSE		3385	7.5	3385	8.2	3385	8.5	33995	9.5	35204	9.7	35318	10.4
DEPRECIATION EXPENSE													
DEPR-LEASEHOLD IMPR	66030100	580	1.3	464	1.1	565	1.4	4281	1.2	3154	8	3564	1.0
DEPR-AUTO PINSETTERS	66030300	1705	3.8	1731	4.1	1783	4.5	11768	3.3	11766	3.2	11768	3.5
DEPR-BOWLING LANES	66030400	300	7	301	7	300	8	2048	6	2048	5	2048	6
DEPR-BOWL EQUIPMENT	66030500	150	3	148	3	155	4	1020	3	1024	2	1054	3
DEPR-CARPETS	66030600	115	3	114	2	145	4	782	2	790	2	1403	4
DEPR-SIGNS	66030800	80	2	20		25	1	313	1	148		170	
	66030900					4						65	

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FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 4 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
DEPR-MISC. EQUIPMENT	66031000	80	2	62	1	80	2	952	3	476	1	544	2
DEPR VENDING	66031200	25	1	26		30	1	278	1	172		204	1
DEPR R&B EQUIP	66033000			42	1			32		300			
TOTAL DEPRECIATION EXPENSE		3035	6.7	2908	7.0	3067	7.7	21474	6.0	19876	5.5	20820	6.1
LICENSES & TAX EXPENSE													
LISCENSES BOWLING	66040100	323	7	53	1	320	8	373	1	548	1	521	2
LICENSES-REST.AND BA	66040200	70	2	76	1	39	1	779	2	792	2	801	2
STATE FRANCHISE TA	66042000							15				38	
PROP. TAX-PERSONAL	66042100	237-	5	390	9	13-		3883	1.1	4056	1.1	3277	1.0
TOTAL LICENSES & TAX EXPENSE		156	3	519	1.3	346	9	5050	1.4	5396	1.5	4637	1.4
INSURANCE													
FIRE INSURANCE	66050100	115	3	116	2	55	1	1203	3	1200	3	606	2
TOTAL INSURANCE		115	3	116	3	55	1	1203	3	1200	3	606	2
TOTAL FIXED EXPENSE		6691	14.8	6928	16.8	6873	17.3	61722	17.2	61676	17.1	61381	18.0
PAYROLL EXPENSE													
PAYROLL-ADMIN.	67010101	1621	5.2	1550	4.9	1676	5.2	20863	7.3	17100	5.9	15686	5.7
PAYROLL-OPERATIONAL	67010102	2310	6.6	1800	5.4	1807	5.6	20128	7.1	16070	5.5	17018	6.2
PAYROLL-MAINTENANCE	67010103	899	2.5	1325	4.0	861	2.6	7498	2.6	14340	4.9	14388	5.2
PAYROLL-PORTERS	67010104	864	2.4	1020	3.0	954	2.9	10215	3.6	10315	3.5	9463	3.4
PAYROLL-PINCHASERS	67010105	1674	4.7	835	2.5	1608	5.0	16030	5.6	9670	3.3	10956	4.0
TOTAL PAYROLL+ADJ H/O	GN	677	1.8					677	1			22	
TOTAL		8245	23.6	6630	20.0	6908	21.5	75411	26.7	67495	23.2	67533	24.7
PAYROLL BARTENDER	67010201	607	9.7	255	6.3	323	7.3	3276	8.0	2628	7.3	2971	8.5
PAYROLL WAITRESS	67010202	224	3.6	170	4.2			1642	4.0	1730	4.8	385	1.1
PAYROLL ADMIN-BAR	67010203	323	5.2					762	1.8				
TOTAL		1154	18.6	425	10.5	323	7.3	5680	13.9	4358	12.1	3356	9.6
PAYROLL COOKS	67010302			1405	32.7					11000	30.5	3642	10.8
PAYROLL WAITRESS	67010303	1398	33.6			1235	36.4	11456	33.0			6745	20.1

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FAIRLAWN LANES 1030
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TENPIN 32

PROFIT OR LOSS — STATEMENT PAGE NO. 5 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
TOTAL		1398	33.6	1405	32.7	1235	36.4	11456	33.0	11000	30.5	10387	31.0
TOTAL PAYROLL EXPENSE		10797	23.9	8460	20.5	8466	21.3	92547	25.9	82853	22.9	81276	23.8
PAYROLL TAX EXPENSE													
PAYROLL TAX-BOWLING	67020100	543	1.2	597	1.4	371	9	5878	1.6	6074	1.6	5112	1.5
PAYROLL TAX-BAR	67020200	94	2	38		37	1	531	1	393	1	429	1
PAYROLL TAX-RESTAURANT	67020300	133	3	126	3	70	2	1193	3	992	2	894	3
TOTAL PAYROLL TAX EXPENSE		770	1.7	761	1.8	478	1.2	7602	2.1	7459	2.1	6435	1.9
EMPLOYEE BENEFITS EXP													
HOSP INSUR	67030100	59	1	57	1			617	2	596	1	39	
UNION PENSION/WELFAR	67030200	463	1.0	178	4	198	5	2758	7	1848	5	1750	5
EMPLOYEE MEALS	67030500			180	4	3				1616	4	266	1
OTHER BENEFITS	67039900					18		5				92	
TOTAL EMPLOYEE BENEFITS EXP		522	1.2	415	1.0	219	5	3380	9	4060	1.1	2147	6
INSURANCE - OTHER													
WORKMENS COMP. INS.	67040100	125	3	123	2	125	3	1300	3	1276	3	1300	4
LIABILITY INSURANCE	67040200	90	2	93	2	90	3	936	3	964	2	936	3
OTHER INSURANCE	67049900	90	2	73	1	90	2	946	3	756	2	946	3
TOTAL INSURANCE - OTHER		305	7	289	7	305	8	3182	9	2996	8	3182	5
TRAVEL & MEETINGS													
TRAVEL & ENTERTAIN	67050100	11		96	2	195	5	117		1000	2	449	1
DISTRICT MGR MEETI	67050200							16					
REGIONAL MGR MEETI	67050300							228	1			142	
EMPLOYEE TRAINING	67050500							418	1			228	1
TOTAL TRAVEL & MEETINGS		11		96	2	195	5	779	2	1000	3	819	2
REPAIRS & MAINTENANCE													
JANITORIAL CONTRAC	67060101					59	2	108				385	1
CASH REGISTER CONTR.	67060103	8		19				271	1	196		431	2
GARBAGE COLLECTION	67060105	75	2	83	2	65	2	810	2	860	2	715	2
PEST CONTROL	67060107	7		13		7		88		132		88	
FIRE EXTINGUISHER	67060108	23		18		64	2	112		184		123	

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 6 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
TOTAL		113	2	133	3	195	5	1389	4	1372	4	1742	5
SMALL TOOLS	67060200	1		23		3		185	1	236		219	1
PINSETTER PARTS/LA	80670603	187	4	452	1.0	1325	3.3	4091	1.1	4704	1.3	5240	1.5
PINSETTER MAINT. SUP	67060400			18		50	1	6		184		81	
LANE PARTS REPLACEMN	67060500	63	1	58	1	53	1	580	2	600	1	712	2
LANE MAINT. SUPPLIES	67060600	147	3	58	1	345	9	567	2	600	1	1175	3
RESURFACING	67060700	135	3	155	3	115	3	1475	4	1372	3	1197	4
JANITORIAL EQUIPT/RE	67060800	15		12		25	1	54		120		25	
PIN MAINTENANCE	67060900	220	5	68	1			229	1	704	1	257	1
REFRIG. EQUIPT R&M	67061100	94	2	37		60	2	155		380	1	106	
REST. EQUIPT. R & M	67061200	169	4	18		90	2	558	1	184		168	
BAR EQUIPT. R & M	67061300	36	1	18		78	1	268	1	184		141	
HEAT-A/C R & M	67061400			144	3			729	2	1496	4	1411	4
BUILDING R & M	67061600	461	1.0	116	2	124	3	3473	1.0	1200	3	1238	4
EXTERIOR LAND R & M	67061700			106	2	52	1	1153	3	1104	3	899	3
FRAMEMASTER R & M	67061800	18		12				18		120			
BUS REPAIRS & MAINT.	67061900	360	8	46	1	83	2	630	2	480	1	746	2
VENDING MACHINE R &	67062000			6				194	1	64		16	
SIGN REPAIRS & MAINT	67062200			46	1			53		480	1	255	1
OFFICE EQUIPT. R & M	67062500			12				105		120		25	
OTHER REPAIRS/MAINT.	67069900	490	1.1	12				490	1	120		127	
TOTAL REPAIRS & MAINTENANCE		2509	5.5	1550	3.7	2598	6.5	16402	4.6	15824	4.4	15780	4.6
OPERATING SUPPLIES													
BOWLING SUPPLIES	67070100	510	1.1	135	3	95	2	2893	8	1404	3	1206	4
BUS SUPPLIES	67070300	98	2	48	1	91	2	796	2	496	1	547	2
RESTAURANT SUPPLIES	67070400	424	9	241	5	250	6	2486	7	2500	6	2749	8
BAR SUPPLIES	67070500	132	3	20		6		435	1	208		229	1
LIGHTING SUPPLIES	67070700			39		9		425	1	404	1	249	1
JANITORIAL SUPPLIES	67070800	478	1.1	58	1	194	5	1797	5	600	1	884	2
NURSERY SUPPLIES	67070900			12		4		25		120		30	
OFFICE SUPPLIES	67071000	7		31		50	1	398	1	324		322	1
POSTAGE SUPPLIES	67071100	32	1	58	1	48	1	458	1	600	1	375	1
DUPLICATING SUPPLIES	67071200			13				122		132		34	
PIN AMORTIZATION	67071300	320	7	305	7			2984	8	2928	8	92	
VENDING SUPPLIS	67071600			6		63	2	111		64		66	
OTHER SUPPLIES	67079900			10				485	1	104		92	
TOTAL OPERATING SUPPLIES		1999	4.4	976	2.4	810	2.0	13415	3.7	9884	2.7	6875	2.0

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
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PROFIT OR LOSS — STATEMENT PAGE NO. 7 DECEMBER 1972 PROGRAM LP08C-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
LAUNDRY													
LAUNDRY-BOWLING	67080100	64	1	52	1	13		384	1	544	1	260	1
LAUNDRY-BAR	67080200	15		18				142		184		114	
LAUNDRY-RESTAURANT	67080300	67	1	12		21	1	516	1	120		357	1
TOTAL LAUNDRY		146	3	82	2	34	1	1042	3	848	2	731	2
UTILITIES													
GAS	67090100	1009	2.2	1731	4.1	616	1.5	4916	1.4	18004	4.9	5464	1.6
ELECTRICITY	67090200	867	1.9			603	1.5	11333	3.2			10535	3.1
WATER	67090400							497	1			807	2
TOTAL UTILITIES		1876	4.1	1731	4.2	1219	3.1	16746	4.7	18004	5.0	16806	4.9
COMMUNICATION EXPENSE													
T & T -BASE CHARGES	67100100	57	1	140	3	48	1	679	2	1456	4	581	2
T & T -TOLL CHARGE	67100200	141	3			47	1	1147	3			686	2
TOTAL COMMUNICATION EXPENSE		198	4	140	3	95	2	1826	5	1456	4	1267	4
OUTSIDE SERVICES													
CASUAL SERVICE-BOW	67110100	41	1					376	1			628	2
CASUAL SERVICE-REB	67110200							737	2			532	2
DETECTIVE SERVICES	67110400			18				93		184		148	
LEGAL SERVICES	67110500			85	1			57		780	2	393	1
PROP. TAX ADMIN.	67110600	24	1	24		24	1	250	1	248		250	1
TOTAL OUTSIDE SERVICES		65	1	107	3	24	1	1513	4	1212	3	1951	6
SALES TAX EXPENSE													
SALES TAX-PRO SHOP	67120100	51-	1			63-	2	364-	1			357-	1
SALES TAX-REB	67120200	64-	1			121	3	98-				26	
SALES TAX OTHER	67120600	20	1			44	1	498	1			382	1
TOTAL SALES TAX EXPENSE		95-	2			102	3	36				51	
ADVERTISING & PROMOTN													
JR. SHIRTS	67130401	949	2.1	128	3	317	8	903	3	1328	3	317	1
COACH SHIRTS	67130402	19				49	1	19				96	
TOTAL		968	2.1	128	3	366	9	922	3	1328	4	413	1
FIRST LINE TROPHIES	67130501			176	4			1834	5	1824	5		

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 8 DECEMBER 1972 PROGRAM LPG80-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
JUNIOR TROPHIES	67130503	44	1	176	4			427	1	1824	5		
TOTAL		44	1					2261	6				
	67130701	385	9	385	9			4033	1.1	4004	1.1	4239	1.2
TOTAL		385	9	385	9			4033	1.1	4004	1.1	4239	1.2
BAR PROMOTION	671312C1	9						26				11	
	67131401											75	
NEWSPAPER ADVERTSI	67131501	137	3					242	1				
LOCAL POSTERS	67131503							59					
MAGAZINE ADVERTISI	67131505					112	3	111				182	1
BOWLING PROMOTION	67131508	1103	2.4	235	5	794	2.0	2044	6	2444	6	1544	4
TOTAL		1240	2.7	235	6	906	2.3	2456	7	2444	7	1801	5
TOTAL ADVERTISING & PROMOTN		2646	5.8	924	2.2	1272	3.2	9698	2.7	9600	2.7	6464	1.9
OTHER OPERATING								14				103	
CASH SHORT/OVER BO	67140100	30	1			9-		31				4	
CASH SHORT/OVER R&	67140200	9				1							
	67140300							20					
ROBBERY LOSSES	67140400							175		120		188	1
FREIGHT	67140600	25	1	12		33	1	11				7	
CASH RPTS OUT OF B	67140700	55-	1					46					
RECRUITING EXPENSE	67140800					25	1	215	1			264	1
DUES & SUBSCRIPTIO	67140900	30	1			8-		67-				57-	
PURCHASE DISCOUNTS	67141000	22-											
INVOICES IN TRANSI	67141200	1280-	2.8			1280-	3.2						
NSF CHECKS	67141300					3		48				20	
C/D OUT OF BALANCE	67141900	20-						13					
MISC EXPENSE	67149900	28-	1			7		135				67	
INVALID ACCOUNT PE	67149990	34-	1			1-							
TOTAL OTHER OPERATING		1345-	3.0	12		1229-	3.1	641	2	120		596	2
TOTAL CONTROLLABLE EXPENSE		20404	45.1	15543	37.6	14588	36.6	168809	47.2	155316	42.9	144380	42.4
TOT FIXED & CNTRL EXP		27095	59.9	22471	54.4	21461	53.9	230531	64.4	216992	60.0	205761	60.4

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 9 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
TOTAL GROSS MARGIN FOR COMP		14005	30.9	15759	38.1	14288	35.9	99205	27.7	117331	32.4	109590	32.1
MISC INCOME & EXP.													
ALLOC. HOME OFFICE EXP													
ALLOC OF HO EXP	77310100	2155	4.8	2154	5.2	1845	4.6	22412	6.3	22400	6.1	19188	5.6
TOTAL ALLOC. HOME OFFICE EXP		2155	4.8	2154	5.2	1845	4.6	22412	6.3	22400	6.2	19188	5.6
TOTAL TOT MISC INCOME & EXP		2155	4.8	2154	5.2	1845	4.6	22412	6.3	22400	6.2	19188	5.6
PROV FED & ST TAX													
PROV FOR ST INCOME TAX													
PROV STATE INC TAX	82010100	199	4			185	5	649	2			45	
TOTAL PROV FOR ST INCOME TAX		199	4			185	5	649	2			45	
PROV FOR FED INCOME TX													
FED INCOME TAX	83010100	1008-	2.2	962	2.3	1065	2.7	2307	6	10000	2.7	5007	1.5
TOTAL PROV FOR FED INCOME TX		1008-	2.2	962	2.3	1065	2.7	2307	6	10000	2.8	5007	1.5
TOT PROV FED & ST TAX		809-	1.8	962	2.3	1250	3.1	2956	8	10000	2.8	5052	1.5
TOTAL PROFIT OR LOSS -		12659	28.0	12643	30.6	11193	28.1	73837	20.6	84931	23.5	85350	25.0
*******LINEAGE*******													
TEN PIN LINEAGE													
TEN PIN AD LGE LINES.	90010100	27954	51.5	24037	48.8			220137	51.5	217006	50.4		
ADULT OPEN	90010200	11358	20.9	14000	28.4			100277	23.5	119205	27.7		
ADULT SPECIAL	90010201	507	9	570	1.2			5216	1.2	5490	1.3		
ADULT TOURNAMENT	90010202							8806	2.1	565	1		
TEN PIN JR LGE LINES.	90010300	7165	13.2	5280	10.7			47827	11.2	47030	10.9		
JUNIOR OPEN	90010400	3026	5.6	4007	8.1			22110	5.2	28454	6.6		
JUNIOR SPECIAL	90010401	36	1	220	4			2736	6	4638	1.1		

FAIRLAWN LANES 1030
FAIRLAWN NJ
REGION = 1 DISTRICT = 25
TENPIN 32

PROFIT OR LOSS - STATEMENT PAGE NO. 10 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL
JUNIOR TOURNAMENT	90010402	426	8	750	1.5		1540	4	6950	1.6	
SCHOOLS	90010403	1420	2.6	441	9		3494	8	1331	3	
TOTAL TEN PIN LINEAGE		51892	95.6	49305	100.0		412145	96.4	430669	100.0	
TOTAL PAID LINEAGE		51892	95.6	49305	100.0		412145	96.4	430669	100.0	
AVERAGE PRICE BOWL REV.		61		61			62		61		
AVERAGE PRICE GROSS REV.		87		84			87		84		
FREE LINEAGE TEN PIN											
TEN PIN FREE EMPLOYEE	90110100	287	5				1929	5			
TEN PIN FREE PROM.	90110200	313	6				5442	1.3			
TEN PIN FREE INSTR.	90110300						15				
TEN PIN FREE WARM UP	90110400	1414	2.6				5859	1.4			
TEN PIN FREE R M	90110500	380	7				2031	5			
TEN PIN FREE WALK OUT	90110600						8				
TOTAL TEN PIN FREE LINEAGE		2394	4.4				15284	3.6			
TOTAL FREE LINEAGE		2394	4.4				15284	3.6			
TOTAL LINEAGE		54286	100.0	49305	100.0		427429	100.0	430669	100.0	
AVERAGE PRICE BOWL REV.		59		61			60		61		
AVERAGE PRICE GROSS REV.		83		84			84		84		

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BRUNSWICK
BOWLING ESTABLISHMENT LEASE

PX67 in evd

Brunswick CORPORATION

THIS LEASE, dated July 10, 1970 by and between RAHWAY RECREATION REALTY CO., a New Jersey corporation, and RAHWAY RECREATION, INC., a New Jersey corporation, hereinafter called "Landlord", and BRUNSWICK CORPORATION, a Delaware corporation, hereinafter called "Tenant" or "Brunswick";

WITNESSETH:

Section 1. PREMISES. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the following:

(a) The land and parking area located at and commonly known as Rahway Recreation Bowling Academy, together with the easements and hereditaments appertaining thereto, as outlined on the plat plan attached hereto and made a part hereof as Exhibit A; (See Addendum)

(b) The improvements on said land consisting principally of a building in which there has been or is being operated a bowling business known as Rahway Recreation (herein called the "Principal Building"); ~~and~~ (See Addendum)

(c) All furnishings, fixtures, equipment, signs and other non-bowling items of chattel property of every kind and character located in, on or about the Principal Building and the above described land and parking lot owned by Landlord and used or useful in connection with the operation of said bowling business, including those items listed in Exhibit B attached hereto and made a part hereof; (herein called "Non-bowling Equipment"), (See Addendum)

All of said real and chattel property taken together is sometimes hereinafter referred to as the "Premises").

Section 2. INITIAL TERM. The initial term of this Lease shall be 84 months, beginning on the 16th day of July, 19 70 and ending on the 15th day of July, 19 77

Section 3. OWNERSHIP. ~~Landlord warrants that the Premises are free and clear of all mortgages and encumbrances except~~ a first mortgage dated ~~XX~~, 19~~XX~~ and recorded in Union ~~Records of XX~~ County, ~~XX~~ Mortgage Book No. ~~XX~~ Page ~~XXX~~, ~~and Landlord further warrants that the said mortgage does not~~

Section 4. RENTAL. Tenant shall pay to Landlord rental at the rate of $2,333.33 per month in advance, on the first day of each month during the initial term of this Lease. All payments are to be made by Tenant to Landlord at 443 West Inman Avenue, Rahway, N.J., or at such other place as Landlord may from time to time designate in writing. At the option of Tenant, mortgage payments payable by Landlord pursuant to the terms of any mortgage on the Premises, may be made by the Tenant and the amounts so paid may then be deducted from rental payments due under this Lease. Landlord will exert its best efforts to obtain from the mortgagee of said mortgage an agreement which will permit Tenant to make said mortgage payments with or without there being any delinquency on the mortgage.

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Section 5. TENANT'S OPTIONS AND LANDLORD'S OPTIONS. Ten (10) years

A. (1) Tenant shall have the option to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the term, to extend the initial term of this Lease for an additional term of ~~twenty (20) years~~ commencing upon the expiration of the initial term, at the ~~same~~ rental rate as provided herein for the initial term. in Section 4 (b).

(2) In addition to the option contained in (1) above, Tenant also shall have the option, to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Lease for an additional term of five years, commencing upon the expiration of the initial term and any extension thereof, at the same rental rate as provided herein for the initial term. in Section 4 (c).

(3) In addition to the options contained in (1) and (2) above, Tenant also shall have the option, to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Lease for an additional term of five years, commencing upon the expiration of the initial term and any extension thereof, at the ~~last~~ rental rate as provided herein for the initial term in Section 4 (d).

(4) ~~Landlord shall have the option, to be exercised by giving Tenant written notice at least 60 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Lease for an additional term of five years, commencing upon the expiration of the initial term and any extension thereof, at~~ (See Addendum)

LEASE VITAL

Section 6. CARE AND MAINTENANCE OF PREMISES. Tenant shall make all repairs to the ~~Premises~~ Premises, including plate glass, which are necessary to keep the Premises in good order and repair except for ordinary wear and tear ~~and except for any repairs or replacements made necessary as a result of damage caused by any of the perils covered by any extended coverage insurance carried by Landlord pursuant to Section 10 hereof~~; however, in no event shall Tenant be required to improve the condition of the Premises over that existing on the date of this Lease. ~~Landlord shall maintain the roof and the outside walls (except for interior surfaces thereof), the sidewalks, driveways, sewers, water and gas pipes~~ and make all repairs and replacements necessary to maintain the building in compliance with all laws and governmental regulations and to protect and preserve the Premises, ~~including but not limited to exterior walls, roof, driveways, sewers, water and gas pipes~~; provided, however, Landlord shall not be required to make any repairs and replacements which are Landlord's obligation if Landlord shall immediately reimburse Tenant for the cost of such repairs and replacements or Tenant may deduct the cost from the rent payable under this Lease. Landlord warrants that on the date of this Lease the building and its mechanical equipment are in good condition and that Landlord knows of no substantial defect therein. Tenant shall have the right to make such interior and exterior alterations as Tenant may determine to be an enhancement of the premises.

* (including the reserved area described in Section 1, and the equipment in such reserved area,)

Section 7. TRADE FIXTURES. Tenant shall have the right to remove its trade fixtures and improvements, including but not limited to bowling alleys, pinsetters, bowling equipment, restaurant and bar equipment, billiard equipment and other chattels. Following the termination of the initial term and any extension thereof, Tenant shall be permitted to retain possession of the Premises for such period of time, not to exceed 30 days, as may reasonably be required to remove its said property from the Premises. (see Addendum)

Section 8. LANDLORD'S ACCESS TO PREMISES. Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the same, or for the purpose of making repairs or alterations to the Premises or any adjacent properties or for any other purpose or purposes contemplated under this Lease. In exercising such rights the Landlord shall not unreasonably interfere with Tenant's business.

Section 9. UTILITIES. Landlord agrees to furnish ~~all~~ the existing heating, air conditioning, cooling and ventilation systems ~~which are installed in the Premises on the date of this Lease~~ and to pay promptly all charges for the use of ~~same~~ such facilities. Tenant agrees to pay promptly all charges for the use of ~~such~~ Tenant's equipment. Landlord agrees to provide for Tenant at the Premises an adequate supply of water, electricity and gas and an adequate sewerage system and Tenant shall pay promptly all charges for the use of such facilities.

Section 10. INSURANCE. ~~Tenant shall pay for fire and extended coverage insurance on the Premises and Landlord shall pay for all other insurance carried by Landlord on the Premises. Tenant will furnish evidence of such insurance to Landlord.~~

Tenant shall carry and pay for Comprehensive Public Liability insurance, which names Landlord as an additional insured, on the Premises (and elevator insurance if there are elevators on the Premises) during the Tenant's occupancy thereof, with Bodily Injury limits of $100,000. per person, $300,000. per accident and a Property Damage limit of $50,000. per occurrence. Tenant will furnish evidence of such insurance to Landlord.

Tenant ~~Landlord~~ shall carry and pay for standard fire, extended coverage, and vandalism and malicious mischief insurance, which names ~~Tenant~~ as an additional insured and which provides for waiver of subrogation rights against Tenant, covering and in an amount equal to the insurable value of the Premises, improvements and appurtenances ~~hereto~~ and will furnish to ~~Tenant~~ Landlord evidence of such insurance.

Tenant ~~Landlord~~

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During the time that Brunswick Corporation is the Tenant of this Lease, it may satisfy each requirement of insurance hereunder (other than public liability insurance) by providing insurance containing a provision for a deductible clause in the amount of up to $25,000.00, and including the Premises in any appropriate blanket policy which it may carry, which blanket policy need not name Landlord as an additional insured, and with respect to the Brunswick bowling equipment, it may act as a self-insurer.

All insurance policies or contracts provided for above shall contain a requirement that there be ten days' written notice to each insured prior to the cancellation of insurance with respect to that insured.

At least fifteen days prior to the expiration of any insurance which has been provided pursuant to the requirements of this section, the party responsible for carrying the insurance will provide to the other party evidence of renewal of such insurance or the replacement thereof.

Section 11. DAMAGE OR DESTRUCTION. If the Premises are destroyed or damaged by fire or the elements or other casualty and the damage or destruction is such that it cannot be repaired by Landlord within sixty days, or if it is such as to exceed 50% of the value of the Premises, Tenant may cancel this Lease by written notice mailed to Landlord thirty or more days before the effective date of cancellation and at anytime within sixty days after the damage or destruction. If the Premises are totally destroyed, Tenant may cancel this Lease by written notice mailed to Landlord within thirty days of the destruction. If this Lease is not cancelled as provided, Landlord at its expense shall with diligence repair, rebuild or restore the improvements and appurtenances as nearly as possible to the conditions existing just prior to the destruction or damage. Tenant's rental during the period from the date of fire or other casualty to the date of complete restoration shall be abated either in whole or pro rata in part, according to the percentage of interference with the conduct of Tenant's business in the Premises.

Section 12. EMINENT DOMAIN. Landlord shall immediately notify Tenant as to any notice or knowledge of any proposed condemnation or eminent domain activity which may affect the Premises.
If Tenant, upon receipt of such notice or other notice that there shall be taken or condemned by any competent authority:

(a) the whole of the Premises, or

(b) less than the whole of the Premises but the remaining portions of the Premises are not sufficient in Tenant's reasonable judgment for the conduct of its normal business operation and Tenant so notifies Landlord within one month after such notice,

then, and in either such event, Tenant may cancel and terminate this Lease as of the time when such taking or condemnation will affect Tenant's business and the parties shall be relieved and discharged of all further liability accruing after the date of such termination except that the rental accruing during the month of such termination shall be apportioned pro rata on a daily basis. Each party shall keep its own award and in the event only one award is given, it shall be apportioned between the parties as their respective interests shall appear.

If there shall be taken or condemned by any competent authority less than the whole of the Premises, and Tenant does not elect to terminate this Lease, then the rental payable under this Lease following such condemnation shall be abated pro rata in part in the same percentage as the value of the portion condemned bears to the value of the entire Premises.

Section 13. DEFAULT. If Tenant shall neglect or fail to make any payments of rent or other payments to be made by it hereunder, and such failure shall continue fifteen days after written notice thereof, or if Tenant shall neglect or fail to perform or observe any of the other covenants and agreements in this Lease contained and on its part to be performed or observed, subject to Section 20 hereof, then Landlord shall have the right to enter upon the Premises or any part thereof and repossess the same as of its former estate and expel Tenant without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be available and upon entry as aforesaid, Landlord shall have the option to terminate this Lease and Landlord shall have the right to pursue such rights and remedies as may be allowed at law or in equity against Tenant.

If, after the commencement of the term of this Lease, Tenant shall be adjudicated a bankrupt or if Tenant shall make an assignment of all or substantially all of its assets for the benefit of creditors or if Tenant shall file in any court, pursuant to any statute, either of the United States or of any state having jurisdiction, a petition in bankruptcy or insolvency or for reorganization or arrangement, or if any such petition shall be filed against Tenant and such proceeding shall not be dismissed within 60 days after such filing, Landlord may cancel and terminate this Lease.

If, after the commencement of the term of this Lease, Landlord shall be adjudicated a bankrupt or if Landlord shall make an assignment of all or substantially all of its assets for the benefit of creditors or if Landlord shall file in any court, pursuant to any statute, either of the United States or of any state having jurisdiction, a petition in bankruptcy or insolvency or for reorganization or arrangement, or if any such petition shall be filed against Landlord and such proceeding shall not be dismissed within 60 days after such filing, or if there shall be filed a mortgage foreclosure or other lien foreclosure proceeding involving the Premises which adversely affects Tenant's business, and which is not dismissed within 45 days after such filing, or, the same having been filed, the Landlord permits a sale to take place thereunder, Tenant may cancel and terminate this Lease.

If Tenant shall have failed to perform an obligation required to be performed hereunder, then, Landlord may, subject to the provisions of Section 20 hereof, perform said obligation and any costs and expenses incurred by Landlord by reason thereof shall be paid to Landlord by Tenant and Landlord may consider same as additional rental.

If Landlord shall have failed to perform any obligation required to be performed hereunder then, Tenant may either cancel and terminate this Lease, subject to the provisions of Section 20 hereof, or Tenant may, but shall not be required, to perform said obligation and Tenant may deduct any costs and expenses incurred by Tenant from any rent or other sums required to be paid by Tenant.

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of a subsequent breach of the same covenant or condition, and a consent or approval to or of any act requiring consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act.

Section 15. NOTICES. Mailing of a written notice or demand by registered or certified mail in a sealed, postpaid envelope addressed to Tenant in care of Manager, Property Administration Department, Bowling Operations at 69 West Washington Street, Chicago, Illinois, 60602, and to Landlord at _____ shall be sufficient notice or demand as of the time of mailing in any case arising under this Agreement.

Section 16. INTERPRETATION. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third parties, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any act of the parties hereto, shall be deemed to create any relationship between the parties other than the relationship of Landlord and Tenant. This lease shall be interpreted under New Jersey law.

Section 17. QUIET ENJOYMENT AND USE OF PREMISES. Tenant upon payment of said rent and performing all the other covenants and conditions aforesaid on Tenant's part to be observed and performed shall and may peaceably and quietly have, hold and enjoy the Premises for the term aforesaid and may occupy the same for all lawful purposes and uses free from any disturbance by the Landlord or any other party. Landlord warrants that the existing uses of the Premises are not prohibited by law or by any agreement, and that Tenant shall be free to operate a bowling establishment, to sell bowling supplies and other recreational goods and to operate a food and alcoholic beverage dispensing business in the Premises. In the event that after the commencement of the term of this lease, the laws or governmental regulations affecting the Premises or the business conducted therein are changed so that the said existing uses are no longer permitted, then Tenant may cancel and terminate this Lease. Tenant may, but need not, use the trade name by which the bowling establishment in the Premises is now known. Landlord warrants the continued availability of the existing means of ingress and egress.

Section 18. ENTIRE CONTRACT. This Lease embodies the entire contract of the parties hereto and shall not be altered, changed or modified in any respect, except in writing by a duly authorized officer or attorney-in-fact of Tenant in Chicago and by Landlord.

Section 19. ASSIGNMENT. Tenant may assign this Lease or may sublet the Premises or any portion thereof and shall give Landlord written notice thereof. Notwithstanding any such assignment, notice of any alleged default by any such assignee shall be given by Landlord to the original Tenant herein in the same manner as provided with respect to the default of Tenant under Sections 13 and 20 of this Lease, and the original Tenant herein shall have the same rights to cure such alleged default as if no assignment had taken place.

Upon any assignment or subletting the Tenant named herein shall remain liable for the payment of the rent and the performance of other terms and conditions herein contained on the part of the Tenant to be performed, provided, however, that if the Tenant sells its bowling equipment and trade fixtures and Tenant's business in the Premises to a bona fide purchaser, either for cash or upon Tenant's standard credit terms, Tenant may assign this Lease to such purchaser and, upon the execution of a written assumption of this Lease by the purchaser for a period of not less than ten years, and the delivery thereof to the Landlord, the named Tenant herein shall be released from all liability of every kind and character under the terms of this Lease accruing subsequent to the date of the delivery of such instrument of assumption to the Landlord. In connection with any such assignment, Landlord agrees to sign such additional documents as Brunswick may reasonably require to provide additional security as against such assignee. In case of sale to bona fide purchaser consent of the landlord must be obtained, but same will not be unreasonably withheld.

Section 20. NOTICE OF BREACH. Any provision herein to the contrary notwithstanding, no breach under this Lease (other than the failure to pay rent) shall be enforced against the Tenant unless the Tenant shall fail to remedy the breach within thirty days after written notice from the Landlord specifying the breach, or, if the breach for any default other than non-payment of rent cannot be remedied within thirty days, then within a reasonable time thereafter provided Tenant commences to remedy such breach within said thirty day period and prosecutes it to completion with diligence.

No breach under this Lease shall be enforced against the Landlord unless the Landlord shall fail to remedy the breach within thirty days after written notice from the Tenant specifying the breach, or if the breach cannot be remedied within thirty days, then within a reasonable time thereafter, provided Landlord commences to remedy such breach within said thirty-day period and prosecutes it to completion with diligence.

Section 21. MEMORANDUM OF LEASE. The parties hereto, concurrently with the execution of this Lease, have executed a short form of lease suitable for recording which may be recorded by either party.

Section 22. SECTION HEADINGS. The section headings used herein are for convenience and reference only.

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Section 23. SUCCESSION. All [illegible]enants and agreements herein contained [illegible] be binding upon and shall inure to the benefit of successors in interest an[illegible] [illegible]signs of the parties hereto.

Section 24. TAXES. Tenant ~~Landlord~~ agrees to pay when due real estate and personal property taxes, which may be levied against the Premises, ~~and to pay personal property taxes on all personal property on the Premises which is owned by Landlord. Landlord will provide to Tenant evidence of such payment within 30 days after making same~~ *the reserved area described in Section 1 and the equipment in such reserved area.

Section 25. NON-SUBORDINATION, This Lease shall not be subordinate to any mortgage or other lien hereafter to be executed or perfected with respect to the Premises.

Section 26. LANDLORD TO ASSIST WITH LICENSES. Landlord will assist Tenant in every way reasonably possible to enable Tenant to obtain or procure by transfer or otherwise, the licenses necessary to operate the bowling establishment, billiard room, ~~bar~~ and restaurant and other businesses attendant to Tenant's normal operations in the Premises. In the event that, through no fault of Tenant, (a) Tenant is unable to obtain any such license, or (b) having obtained the same it is revoked, then Tenant may cancel and terminate this Lease. To the extent that Tenant obtains the benefit of a license fee pre-paid by Landlord, Tenant will make payment to Landlord therefor on a pro rata basis.

Section 27. CANCELLATION. During the time that Brunswick Corporation is the Tenant of this Lease, it shall have the right at any time to cancel and terminate this Lease upon the payment to Landlord of 50% of the remaining unpaid rentals due during any term or extension upon which Brunswick Corporation is then obligated as Tenant hereunder.

Section 28. SERVICE AGREEMENT. (See Addendum)

This Lease consists of ____ printed pages (including this page and pages ____ and ____ containing acknowledgements) together with Exhibit A and B, and additional paragraphs numbered ____ to ____ inclusive, which are attached hereto as additional pages ____ through ____

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

RAHWAY RECREATION REALTY CO.

By William Schmidt Sr

ATTEST: Virginia Medvigy
Secretary

RAHWAY RECREATION, INC.

Attest: Virginia Medvigy
Secretary

By William Schmidt Sr.
Landlord

ATTEST:

E. Vanneman
Assistant Secretary

BRUNSWICK CORPORATION

By M. Rude
Vice President—Tenant

ACKNOWLEDGEMENT BY INDIVIDUAL LANDLORD

State of _____ County of _____, ss.

On this ____ day of _____, 19____, before me _____, a Notary Public in and for the State of _____ County of _____, personally appeared _____ to me known to be the identical individual/s described in and who executed the within instrument, to whom I first made known the contents thereof and acknowledged that he/she/they signed, sealed and delivered the same as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate above written.

_____
Notary Public

My Commission Expires _____

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A1780
Exhibit P67

State of _____ County of _____, ss.

On this ____ day of _____, 19____, before me _____, a Notary Public in and for the State of _____ County of _____, personally appeared _____ known to me to be (one of) the partners in the partnership of _____ and the partners, or one of the partners, who subscribed said partnership name to the within instrument, and acknowledged to me that he/they executed the same in said partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate above written.

_____
Notary Public

My Commission Expires _____

ACKNOWLEDGEMENT BY CORPORATION LANDLORD

State of New Jersey County of Union, ss.

On this 10 day of July, 1970, before me Patricia Savage, a Notary Public in and for the State of New Jersey County of Union, personally appeared William Schmidt, Sr. to me personally known to be the identical person who signed the attached instrument and known to me to be the President of/ Rahway Recreation Realty Co. and Rahway Recreation, Inc. of the corporation which executed the same, who being by me duly sworn, did say that he is President of / Rahway Recreation Realty Co. and Rahway Recreation, Inc., that he knows the seal of said corporation, that the seal affixed to said instrument is the seal of said corporation and that the said instrument was signed, sealed and delivered in behalf of said corporation by authority of its Board of Directors, and said William Schmidt, Sr. acknowledged the execution of said instrument to be his free, true and lawful act and deed and the free, true and lawful act and deed of said corporation by him in his said capacity and by it voluntarily executed for the uses, purposes and consideration therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate first above written.

Patricia Savage
Notary Public Patricia Savage

My Commission Expires _____

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 13, 1975

ACKNOWLEDGEMENT BY TENANT

State of Illinois
County of Cook } SS

I HEREBY CERTIFY that on this 14th day of July, 1970 before me, the subscriber, a Notary Public of the State of Illinois, in and for the County of Cook aforesaid, personally appeared M. Rude, Vice President of BRUNSWICK CORPORATION, Tenant herein, and acknowledged the foregoing Lease to be the free and voluntary act of said corporation.

WITNESS my hand and Notarial Seal.

My Commission Expires Dec 5, 1970

Spencer Elias
Notary Public

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A1781
Exhibit P67

ADDENDUM TO BOWLING
ESTABLISHMENT LEASE

THIS ADDENDUM is to a certain Bowling Establishment Lease dated July 10, , 1970, by and between RAHWAY RECREATION REALTY CO. and RAHWAY RECREATION, INC., hereinafter called "Landlord" and BRUNSWICK CORPORATION, hereinafter called "Tenant". Said Lease is hereby amended as follows:

Section 1. PREMISES. (continued)

(d) From the Premises, as described in Section 1, there is specifically excepted the area devoted to the operation of the cocktail lounge and the equipment and personal property devoted to such cocktail lounge business, the exclusive control of which is reserved to Landord, and in addition, Landlord reserves (1) the right of access at all reasonable times to said reserved area; and (2) the right to use portions of the bowling center concourse and other areas of the Premises for the service of alcoholic beverages and other purposes necessary for the operation of such cocktail lounge business in a manner similar to how it has been operated heretofore. The said exception and reserved rights shall cease and this Lease accordingly be amended to include the area of the said cocktail lounge upon the exercise by Tenant of its option to purchase the said cocktail lounge business.

A1782
Exhibit P67

(e) At the present time, there are installed on the Premises 24 AMF pinspotters which are leased by Landlord from AMF Pinspotters, Inc. pursuant to an equipment lease, which lease will last a number of years from the date hereof. During the term of such equipment lease, Tenant will make the payments to AMF which are due thereunder. Landlord agrees that at the time for action with respect to renewal, purchase or replacement of the said pinsetting equipment that Landlord will abide by any decision which Tenant then wishes to make with respect to pinsetting equipment, in which case the said equipment will be treated as trade fixtures and will be subject to the provisions of Section 7.

V.S.A.
M.

Section 4. RENTAL. (continued)

(b) During the first additional term the rental rate shall be $2,496.67 per month.

(c) During the second additional term the rental rate shall be $2,730.00 per month.

(d) During the third additional term the rental rate shall be $2,846.67 per month.

(e) If Tenant shall have purchased from the Landlord the cocktail lounge business now held by Landlord at the premises during the term of this Lease or any renewals thereof and the

A1783
Exhibit P67

premises defined by this Lease shall have been amended to include the portion of the building occupied by the cocktail lounge, then from and after the date of such purchase and the said amendment of this Lease, the rent shall be at the rate of $12,000 per year above the rent hereinabove provided.

Section 5. TENANT'S OPTIONS AND LANDLORD'S OPTIONS. (continued)

(4) During the initial term of this Lease Tenant shall have the option to purchase the Premises, (including the reserved area described in Section 1) together with all the equipment on the premises, for $600,000/ cash (Six Hundred Thousand Dollars). Exercise of the said option shall be by written notice to Landlord. / Said notice must be given at least 90 days before expiration of said term by registered or certified mail. During any successive term as provided under this Lease, Tenant shall have the right of first refusal to purchase the Premises and the equipment on the premises.

(5) In the event that Landlord shall exercise his option as provided in Section 5(b) (1), then Tenant shall have the right, as provided in Section 5 (b) (2), to pay Landlord for any deficiency.

(b) Landlord's Option

(1) The parties recognize that the profitability of the bar operations on the premises is fully dependent on the successful management of the bowling operation and that improper

PLEASE INITIAL

management of the bowling operation will have an adverse effect on the profits realized by Landlord from the bar operations on the premises. The parties agree that proper management of the bowling operations should result in an operating profit (as calculated pursuant to the accounting system provided by Tenant) in the bar operations of $12,000 per year. If during the twelve month period following the signing of this Lease or during any succeeding twelve-month period, the said profits from the bar are less than $12,000, the amount which the parties agree would result from proper management of the bowling operation, then Landlord at his option may cancel this Lease by written notice within 60 days from the expiration of the twelve-month period yielding deficient operating profits. Said notice shall state the amount of the deficiency in said profits during the twelve-month period.

(2) In the event the Landlord shall exercise his option under Section 5 (b) (1), then Tenant at its option shall have the right to pay Landlord an amount equal to the deficiency within 30 days from the date of the notice of cancellation. If the Tenant exercises this option, then the notice of cancellation shall be ineffective and the terms of this Lease shall continue to apply.

Section 7. (b) Tenant shall have the right to install trade fixtures and improvements or replace Landlord's trade fixtures and improvements with new or better fixtures and improvements in its own discretion where the cost of any single installation or replacement is not more than $2,500.00. Any installation or replacement and improvements above the cost of $2,500.00 shall be made after requesting Landlord's consent, which shall not unreasonably be withheld. Any installation or replacement and improvements made by Tenant without such consent shall not be removed by Tenant upon the expiration of the term and any extension or extensions thereof, provided that Tenant may have the right to remove such equipment after offering to Landlord the option of either purchasing said replacement equipment at book value (and upon the exercise of such option the equipment to remain in place) or of having Tenant replace the equipment previously removed so as to restore the premises to its original condition as respects this equipment.*

U.S. M.

PLEASE INITIAL

(c) Certain contractual obligations of Landlord (as listed in Schedule A attached) are hereby assumed by Tenant. Tenant agrees to indemnify Landlord from all liability under the said listed obligations.

*In any event, landlord elects to have tenant restore the premises to its original condition with regard to this equipment then tenant agrees that no replacement equipment shall be removed until the premises have been so restored to its original condition with regard to this equipment, or until such time as the landlord signifies its satisfaction in writing to the tenant that the premises shall be restored to its original condition, which writing shall constitute a waive this provision in favor of the tenant.

Section 28. SERVICE AGREEMENT

As part of the consideration for the execution of this lease, the Landlord has required that Tenant execute, concurrently herewith, a Service Agreement by which Tenant agrees to perform certain services to Landlord which will be essential to the successful operation of the cocktail lounge. The parties hereto recognize the importance of said Service Agreement and also recognize the importance of the continued operation of the said cocktail lounge to the success of the bowling center business. Landlord agrees to make its best efforts to keep the license for such lounge in good standing and to make no effort to transfer the said license from the premises.

U.S. M.

SERVICE AGREEMENT

AGREEMENT made as of the 10th day of June, 1970, by and between RAHWAY RECREATION, INC., hereinafter called "Rahway", and BRUNSWICK CORPORATION, a Delaware Corporation, with principal office at 69 West Washington Street, Chicago, Illinois 60602, hereinafter called "Brunswick".

WHEREAS, Rahway is the operator of certain cocktail lounge premises located in the bowling center known as Rahway Recreation located at Lawrence Street, Rahway, N.J.; and

WHEREAS, Brunswick, on or about the date of commencement of the term of this Agreement, will commence the operation of said bowling center; and

WHEREAS, Rahway is relying upon Brunswick's experience and knowledge concerning the control and recording of expenses incurred by operators of cocktail lounges in bowling establishments in various sections of the United States; and

WHEREAS, Brunswick has developed guidelines on a computer program basis and is able to provide a monthly set of records keyed to said guideline program; and

WHEREAS, certain expenses such as utilities are not metered so as to indicate what portion of all utilities billed to

Brunswick are used in the operation of the cocktail lounge;

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM.

The initial term of this Agreement shall be for 84 months, beginning on the 16th day of July, 1970, and ending on the 15th day of July, 1977.

PLEASE INITIAL W.S.L. JSM

2. OPTIONS.

(1) Rahway shall have the option, to be exercised by giving Brunswick written notice at least 90 days prior to the expiration of the term, to extend the initial term of this Agreement for an additional term of ten (10) years, commencing upon the expiration of the initial term, or the same rental rate as provided herein for the initial term.

(2) In addition to the option contained in (1) above, Rahway also shall have the option, to be exercised by giving Brunswick written notice at least 90 days prior to the expiration of the initial term of any extension thereof, to extend the term of the Agreement for an additional term of five (5) years, commencing upon the expiration of the initial term and any extension thereof, at the same rental rate as provided herein for the initial term.

(3) In addition to the options contained in (1) and (2) above, Rahway also shall have the option, to be exercised by

giving Brunswick written notice at least 90 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Agreement for an additional term of five (5) years, commencing upon the expiration of the initial term and any extension thereof, at the same rental rate as provided herein for the initial term.

3. SERVICES.

The parties agree that Brunswick will:

(a) furnish gas, light, heat, hot and cold water, and air conditioning to Rahway's premises for which Rahway agrees to pay $350.00 per month, which amount shall be adjusted from time to time in accordance with the basis upon which it was originally determined to reflect changes in wage rates or changes in the utility or water rates.

(b) perform all cleaning, maintenance and janitorial services including the removal of trash, garbage and other disposable waste for $150.00 per month which Rahway agrees to pay, and which amount shall be adjusted from time to time to reflect changes in wage rates or changes for scavenger services.

(c) provide bookkeeping services for the keeping of accurate records, assist in providing information necessary for the maintenance and renewal of all licenses necessary for the operation of the business, and provide information for preparation

of Federal, State and local tax returns pertaining to the operations carried on by Rahway at said location for which Rahway agrees to pay $400.00 per month. Brunswick will provide a complete monthly statement of all operations not later than the 30th day after the close of each of Brunswick's monthly accounting periods and make payment monthly and a calendar year-end statement of profit and loss on the operation of the business within sixty (60) days after the end of each calendar year. Rahway at its own expense shall have the right to inspect Brunswick's books to verify income,etc.

PLEASE INITIAL

4. DEFAULT.

In addition to the failure of either party to comply with any requirement of this Agreement, either party shall be deemed to be in default under this Agreement if, at any time while this Agreement is in effect, either party is adjudicated a bankrupt or makes an assignment of all or substantially all of its assets for the benefit of creditors, or files in any court (pursuant to any statute of either the United States or of any state) a petition in bankruptcy or insolvency or for reorganization or arrangement, or if any such petition is filed against either party and the proceeding is not dismissed within sixty (60) days after such filing.

5. NOTICE OF DEFAULT.

Except for Rahway's obligation to make payments to Brunswick and except for the type of default specified in Section 4 above, any default under this Agreement shall not be enforced

against either party unless (a) the party in default is given thirty (30) days written notice specifying the nature of the default, and (b) the party in default either

(i) fails to remedy the default within thirty (30) days after the notice is given, or

(ii) fails to commence to remedy a default which reasonably cannot be remedied entirely within thirty (30) days, within thirty (30) days after the notice is given, and fails thereafter to continue diligently to remedy the default.

6. TERMINATION.

(a) Upon the termination, for any reason, of that certain Lease of the said bowling center premises executed concurrently herewith between Rahway and Brunswick Corporation, this Agreement shall thereupon also terminate.

(b) Upon termination of this Agreement, the parties shall do all of the following:

(1) Brunswick immediately shall deliver to Rahway control of all books, records, bank accounts, and other materials necessary for the operation of the cocktail lounge business.

(2) Within sixty (60) days after the termination date, Brunswick shall provide Rahway with an accounting of the operation of the business for the period from the date of the preceding accounting to the termination date.

(3) Within sixty (60) days from the termination date, each party shall deliver to the other any monies due to the other.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST: RAHWAY RECREATION, INC.

Virginia Medvigy By William Schmidt Sr.

ATTEST: BRUNSWICK CORPORATION

E. Vannemann By [illegible]

(3) Within sixty (60) days from the termination date, each party shall deliver to the other any monies due to the other.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

/s/ Virginia Medwig

RAHWAY RECREATION, INC.

By /s/ William Schmidt Sr.

ATTEST:

BRUNSWICK CORPORATION

By

OPTION AGREEMENT

OPTION AGREEMENT made July 10 , 1970, between RAHWAY RECREATION, INC., a New Jersey corporation, hereinafter called the "Owner", and BRUNSWICK CORPORATION, a Delaware corporation, with principal office at 69 West Washington Street, Chicago, Illinois 60602, hereinafter called "Brunswick".

WHEREAS, the Owner is the record owner of a cocktail lounge (including the liquor license for said lounge) in the bowling center known as Rahway Recreation located at Rahway, New Jersey; and

WHEREAS, Brunswick is entering a lease of even date with the Owner for the lease of the bowling premises operated at the same address; and

WHEREAS, Brunswick seeks an option to purchase the cocktail lounge;

NOW, THEREFORE, in consideration of $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed that:

1. Subject to the approval of any authorities having jursidiction under the liquor control laws of New Jersey, Brunswick may purchase the said cocktail lounge business, including the said license, the inventory and the good will, at any time

during the initial term of the lease of the bowling premises, and all additional terms, from Owner to Brunswick for $50,000.00 plus the value of any liquor inventory.

2. Subject to the same approvals as above, the Owner shall have the right to repurchase the said business from Brunswick on the same terms as above upon the expiration of the initial term of the lease of the bowling premises, and all additional terms, to Brunswick except that this right shall be extinguished upon the exercise by Brunswick of its option under the lease to purchase the premises and equipment.

RAHWAY RECREATION, INC.

ATTEST:

Virginia Mahaney

by: William Schmidt Jr

BRUNSWICK CORPORATION

ATTEST:

E. Vanneman

by:

SVP

A1796
Exhibit P67

MAYER, BROWN & PLATT
231 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60604
312-782-0600
TELEX 253780
CABLE LEMAY

EUROPEAN OFFICE
17 AVENUE MATIGNON
PARIS 8e
359 84 78
TELEX 29818
CABLE LEMAYLAW

WASHINGTON OFFICE
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-833-1870
CABLE LEMAYDC

P# 68

June 26, 1972

RECEIVED
JUN 27 1972
LAW FIRM OF
MALCOLM A. HOFFMANN

Malcolm A. Hoffmann, Esq.
12 East 41st Street
New York, New York 10017

Re: NBO v. Brunswick

Dear Mr. Hoffmann:

This is in response to your letter to me dated June 5, 1972.

The BCO centers in the 500 series are operated by Brunswick for the owner under a management agreement. The 800 series BCO centers are in Canada.

With respect to the first group of centers you inquired about, Brunswick did not operate any of them after 1968. Brunswick discontinued managing 500 in 1967, 502 in 1966. Centers 801, 802, 803 and 809 were closed or sold in 1967; 806 and 813 were closed or sold in 1966, and 814 was closed in 1968.

As to the second group of centers, Brunswick discontinued management of 503, 504, 505 and 512 in 1968, and 506, 507 and 509 in 1969. Brunswick acquired 511 in 1968 and it is now operated as 381. I am advised that Brunswick has not utilized numbers 551, 555 or 556. Centers 807, 812 and 816 were closed or sold in 1968, and 800 and 804 were closed in 1969.

With respect to the third group of centers mentioned in your letter, the 1971 P & L statements are enclosed, with the exception of centers 508, 514 and 517 as to which Brunswick discontinued its management in 1970.

A1797
Exhibit P68

These P & L statements are furnished pursuant to our continuing agreement with respect to keeping them and the information contained therein confidential and for use only in connection with this litigation.

Very truly yours,

Thomas B. McNeill

TBM:kw
ENC.

A1798
Exhibit P68

Supreme Court, U. S.
FILED
MAY 24 1976

APPENDIX

Volume 7.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,
Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

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Brunswick CORPORATION

GENERAL OFFICES

PX72
in evid 4/25/73

April 12, 1973

Rahway Recreation Realty Co.
Rahway Recreation, Inc.
443 West Inman Avenue
Rahway, New Jersey 07065

re: Lease dated July 10, 1970
Rahway Recreation
Rahway, New Jersey

Gentlemen:

The undersigned Brunswick Corporation, tenant of the above lease, hereby gives written notice to you that with reference to (a) its option contained in subparagraph (4) of Section 5A to purchase the Premises during the initial term of the lease, and (b) its right of first refusal to purchase the Premises during any successive term, as provided under the lease, it has never exercised its said option, and that it now irrevocably releases, relinquishes and divests itself of said option and of said right of first refusal.

Very truly yours,

BRUNSWICK CORPORATION

By: _____
Vice-President

CERTIFIED
RETURN RECEIPT

A1799
Exhibit P72

PX73

June 5, 1972

Thomas B. McNeill, Esq.
Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

Re: BRO v. Brunswick

Dear Mr. McNeill:

During the early part of April of this year, Bob Biggar advised you by telephone that the BRO Profit and Loss Statements for the year 1971 for individual centers which you forwarded to us did not cover some 50 centers for which we had previously received counterpart statements for earlier years. Nine of the centers showed no activities for the years 1969 and 1970, 16 centers showed no activity for the year 1970 and 24 centers showed activities for the year 1970 only. In addition, we received no Profit and Loss Statements for 1971 for any centers above the series number 4000.

Specifically, no activities during 1969 and 1970 were shown for the following 9 BRO centers:

500	805
502	809
801	813
802	814
803	

Similarly, no activities were shown for the following 16 centers during 1970:

503	800
504	804
505	807
506	812
507	816

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A1800
Exhibit P73

509	551
511	555
512	556

Finally, the following 24 DSOD centers showed activities for the year 1970 but we received no 1971 statements as to them:

501	522
503	523
510	524
513	525
514	805
515	808
516	819
517	811
518	815
519	817
520	818
521	819

In view of the fact that the trial is now scheduled to proceed in September of this year, I would appreciate receiving either the 1971 Profit Statements of these specific centers or, if for some reason they did no business during the year 1971, some explanation of this fact from you.

Thank you for your cooperation in this matter.

Very truly yours,

Malcolm A. Hoffmann

MAH:RS

bc: Mr. Daniel Parke Lieblich

A1801
Exhibit P73

BPAA # 3
(No. 1, 3-57)

PX 74
in evid

PROCEEDINGS

EXECUTIVE COMMITTEE

BOWLING PROPRIETORS ASSOCIATION OF AMERICA

Sheraton Hotel

San Juan, Puerto Rico

June 22-23-26, 1965

PL. EX. 101 id.

[PX Rule # 10 id 6/14/68]

A1802
Exhibit P74

A meeting of the Executive Committee of the Bowling Proprietors' Association of America was called to order in the Sheraton Hotel, San Juan, Puerto Rico, Tuesday, June 22, 1965, at 2:00 P. M., Mr. C. E. Goldberg, Chairman of the Executive Committee, presiding.

CHAIRMAN GOLDBERG: We will call the meeting of the Executive Committee to order. I'm sorry we're late. Your President will have to take the responsibility. He was having another meeting.

We are going to skip over our usual procedure of a roll call and the reading of the Minutes of the previous meeting because we have some guests, visitors and friends here and we will go right to the item that you are interested in and that is listed on my agenda as "Presentation - Brunswick B.C.O.D. Policies by Milt Rudo. Milton, you have the floor. If there is anybody here who doesn't know Milton, after all these years in the bowling business and appearances before us with his very beautiful pictures, here he is.

MR. RUDO: Fellows, there have been a lot of rumors and a lot of discussions about our operation and I frankly am very grateful for the opportunity to discuss it openly with you and explain to you what we

are doing and our purpose and intentions in operating bowling centers.

With me here today, because of some of the points of interest, I have F. Stefan. Ed. is here as Brunswick's General Counsel, a Director of our Company, but he is associated with an outside law firm. Some of you have met Ed. He has been around for a while.

In addition, we have Roger Bensinger, who is Vice President of Marketing for the Bowling Division. Roger is sitting over here in the corner.

And Jack Thomas, Vice President and Sales Manager of the Bowling Division.

These gentlemen are here representing our Company. They are vital with you as our customers and the observations we made.

Last year I left the bowling Division to be educated and left the Company about September 1 and went off to school. Prior to leaving, we had decided to go into the bowling center operation. While I was gone, Jack Hanigan called me to Harvard and said, "Milt, I want you to head this up as a separate division."

First, frankly, after being away for two and one-half months, I thought it was a kick in the

tell. I thought they had forgotten me and it bothered me. Later, I was convinced, after having further discussions with him, this was a good idea and it was something that we could contribute to the bowling industry.

Remember this, I had 25 years with this company in the supply end and the selling of equipment. After I had thought this over, frankly, after I got back and they had a chance to talk to me about this and what the goals were, I approached this with a lot of enthusiasm.

Very humbly I will say to you I honestly did not know the retail end of the bowling business. I made this statement last night with Bud. I don't know it now. I don't profess to know it now. I am learning, and I have learned a great deal, because it is a different business than the business I have been doing for 25 years. I say this to you with some knowledge but lack of experience, if I may.

Now we have called this new division Bowling Centers Operations Division. It is a separate division. We call it B.C.O.D.

To get into what our actual objectives are, I would like to read to you from our annual report,

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which was published on the first of March and was received by over 100,000 shareholders, and I quote verbatim:

"The Company recently established a Bowling Center Operations Division. In addition to providing economic evaluation, management counseling, and promotional aids for bowling proprietors, the Division is prepared to assume salvage measures in the interim operation of repossessed bowling centers in locations with good potentials pending their resale as a growing business with credit-worthy operators with proven managerial ability."

This was in our annual statement published in March. I realize everyone doesn't read all the words in an annual statement. We have not kept it as a secret. And if any of you were in attendance at our stockholders' meeting, as I recall, Jack Hanigan was at our meeting and it was later discussed in the Wall Street Journal and other papers, "Why B.C.O.D.?"

After many months of exhaustive study, we established B.C.O.D. to operate certain bowling centers whose ownership can't or won't meet their obligations for a variety of reasons. You fellows have run into this and know whereof I talk. B.C.O.D. will operate

these ventures until they are turned over to sincere and financially capable investors. This decision we thought we were compelled to make to protect the interests of our stockholders and to protect the value of your investments as bowling proprietors.

Fellows, this procedure of going into the retail operation as a manufacturer is not new in business. It is done every day. It is done by all types of business. General Motors, Hart, Schaffner & Marx, Holiday Hotels, Goodyear, General Electric, General Motors, they're all in this. If any of you have read Mr. Alfred Sloan's book, you will see in this he formed General Motors Holding Corporation in 1929, in which they have taken over and operated dealerships throughout this country. In fact, in this period of time, from 1929 until about a year ago, they operated and have taken over 1800 dealerships, of which about 1200 have been turned back to various different people. And in his calculations and in their experience, they have found out it takes four to six years to rehabilitate a bad dealership.

So we are not doing something that has never been done in industry. It has never been done in the bowling industry and this, I think, is creating

some of the turmoil and some of the discussion.

How do we operate? How it's Brunswick's desire to continue the present owner in his business. Our credit department is charged with that responsibility. They are charged to make a complete analysis of all accounts that become delinquent. They are charged to go to the Bowling Division which Roger and Jack represent here and give promotional help.

We have 29 men on our payroll right now who are out in the field to help proprietors who are having trouble meeting their bills. Roger will discuss more of this at the meeting on Thursday. This Credit Department has to make a financial analysis and they are supposed to do rescheduling where it looks like the potential to pay off is there. Our Company wants to continue the present ownership. Often the Credit Department has gone as far as they can and they feel there is nothing left but repossession or going after the operator legally, after all efforts are made to continue present ownership.

Certain cases arrive where the present ownership either doesn't want to continue or cannot continue and there is where our Company must consider repossession. Before we physically remove an

establishment, it is turned over to my division. We go out and evaluate the given center. We send out real estate people, we send out operating people, and we send out financial people, and accountants we have taken out of other departments of our Company. After a thorough evaluation we pass on the following three alternatives:

To repossess and close. And this is a difficult decision, because everyone loses. Brunswick loses, which is what we as Brunswick are interested in, the industry loses, which sometimes may not be completely agreed upon, and the proprietor whom we have repossessed loses, the resale owner loses, the bank loses, and the industry gets a bad name. So this has to be weighed carefully.

Of the places we have evaluated, approximately 25% have been pulled. We have the facts and figures to prove it. I can show you the houses. I can't guarantee you what happens afterwards, whether somebody else sells them equipment or not. But 25% of what we have evaluated we have pulled. This is since January 1st.

When we decide to repossess and close, that finishes it. After we have evaluated, if we think

it has some potential, our position is to repossess and sell to someone else because it is not the kind of place that we can operate. Either the rent is too high or we don't think it is the kind of place that we can operate from that point of view; the size of the establishment, too, has an effect on whether we should operate it or not. We have set as a bottom limit 16 lanes. We would operate a 12-lane house if it was close to a 16-lane house and we can have one manager running the two and it would seem to have a potential, but basically we have started at 16 lanes.

The other point is the location. It may be out of the way or it is not the kind of place that we can cover with the kind of supervision we need to run this organization.

Another place where we would evaluate and sell rather than operate is where we find a financially sound customer who is interested in putting up the money and operating this establishment, and we have handled a couple of those. In some cases landlords have come up with cash and paid us out. And sometimes we can't get a short-term lease, which is our basis of operation.

Of course, the third alternative to us,

which is different than negotiate and sell, the five classes I have just given you, where we would not operate, is to take over and operate. In this we have hired people as managers, we have trained them and tried to re-evaluate the business. This is the way we approach our problem.

In our operations, we at Brunswick are the last people in the world to want to do anything to endanger this business. It is our utmost hope to raise the profitability of the bowling business. Bowling is an important, in fact, the most important integer of our business. This is not conversation. We have had many months of discussion concerning that particular paragraph.

Let's talk about the significance of B.O.O.D. to you as operators and to the industry. I have made some statements here. In analyzing our position, we decided to approach the significance as to why do people fail in the bowling business? And the first thing that comes to us is capitalization. People with low down payments and high monthly payments just can't meet their obligations under today's business.

Who caused it? It happened. We can't go back. but we don't have to make the same mistakes in

the future. This hurts because the guy who is under-capitalized creates havoc in the industry. All of you have experienced this. With higher down payments and closing these pieces of business, your business becomes more valuable because, follows, when there is a glut on the market of used equipment and it goes for any kind of price, you may make a bargain, or some of you who wish to expand, but basicly you set a standard of evaluation of your business. And low-priced used equipment hurts your business. It may not seem so now but I'm sure if you think about it, it is true. This is our thinking and it is of significance to you in capitalization.

The second reason why businesses fail is poor management. These terms generally don't apply only to the bowling business, by the way, but apply to all business. If I have a management that hurts you, it hurts the manufacturer and it hurts the industry because people who do not promote this business, who do not compete for the recreation dollar, hurt all of us. When there is ineffective management, I think we are all affected. We think that part of our job in operating establishments will be to make bowling more attractive to people, to help make bowling more

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attractive to people and have them bowl instead of doing other recreational activities. We think we can participate and help you.

The third point is location. If the location is poor generally, this means removal, really. As I told you earlier, we have removed approximately 25% to 30% of the places we have evaluated since we have set this division in operation. And I would like to cover generally some of our policies and ways we are approaching this. I would like to go through it and turn over part of the meeting to Ed. Stefan and answer any question, if you wish, Ed. and Manny.

In essence this B.O.O.D. operation is a rescue operation to maintain those establishments which are basically sound and return them to independent ownership when a new investor provides substantial equity and demonstrates potential for long ranges. The whole industry will gain in stature. This, we think, is one of the most significant of the three points I made.

Secondly, by being in the operating end of the business I think Brunswick will understand your problems and will permit us to test and implement new business building and management techniques which we

will always make available to the industry - always. I think we will in time be able to create a course of trained bowling center management.

I have heard while I have been here that you can't hire people from the outside. Gentlemen, we have hired over 50 people who have never been in the bowling business and we have trained them and they are anxious to go to work in the bowling business.

Our aim is to help develop a profit-making formula so more money can be made by the proprietors who have invested their money in this business. As we look at this whole picture, we feel we have made an honest, sound business decision to help the industry. We cannot be all things to all men. We want a sound industry. Some people say, "Pull out this house," and some people say, "Leave it in business." Some people have got to disagree with us. We have got to judge it on our evaluations. Therefore, on some occasions we are going to have one man, because we pulled it out in another case, we are going to have a man unhappy with us because we have taken it over and are operating it. It is not a joyful position, I tell you.

I can promise you and I can guarantee you

our company is interested in the welfare of this business.

Now I haven't covered anything specifically and I'm sure you want to learn some more of our operations and how we operate generally. At the present time we operate 60 bowling establishments across the country. These are from California to New York. They are all sizes. I think the smallest house we have is 16. I think the largest house is 64. We have taken over one place in Ft. Worth, Texas, that had a swimming pool. I never thought we would operate a swimming pool. We took over another place in Colorado Springs that has a tremendous restaurant. We don't know anything about operating a restaurant - but I guess we are going to have to learn. We have hired a man as a food and beverage man. That is one facet of your business which has never really been picked up. We have hired a man who has had 25 years' experience in running restaurants and bars. We have primarily hired people not in the bowling business. The only people I know of in the bowling business that we have hired are some of our salesmen.

There is one case that I know of, Kingsvill Texas, where we supposedly hired a manager from some

lady in Alva, Oklahoma. She has a right to be mad. We were wrong. I can assure you the people who were responsible for it have been properly chastised. We are not going to hire people from any bowling establishment in the United States, because I think we have a responsibility not to interfere with the operations of you people here. It is a very rigid policy. Frankly, I know of no exceptions. There may be but I know of none. All the hiring of managers is done by the home office staff and is not done at the local level. Our manager at a bowling establishment cannot hire anyone excepting a porter or mechanic. He cannot hire another manager for us. This, he cannot do.

Some people want to know how many places we are going to have. I wish I could answer that. I don't know the answer. It depends upon how many people can pay or don't pay their indebtedness. We are not out looking for this. We have to protect our stockholders and we have to protect the industry. We feel it very strongly.

Some people think it is also our intention to dominate the industry at the retail level. Gentlemen, in our calculations there are 4 billion 400 million dollars invested in the bowling industry in

capital needs, equipment, and buildings. For us to get 10% of this would take 400 million dollars. The investment in the business is 4 billion 400 million. For us to get 10% of this market would be 400 million. The net worth of Brunswick is only 200 million,. with all the factories and everything else we have. So I don't know how we can ever dominate this industry. It is strictly a financial point of view, not counting any legal aspect of it.

At present, we don't intend to develop new bowling centers. One very important policy that we have, we cannot and we refuse to be drawn into any price discussion on bowling. We cannot. Our prime interest is to make bowling healthy and profitable. And this is the way we will operate our centers. Our primary interest is to have the bowling business healthy and profitable and this is the way we will operate our center. There are differences in judgment and I will be glad to discuss that with any of you providing my legal counsel allows me.

The programs we use in our establishments will be available to any bowling proprietor in the United States. He can use any part of them or use the whole thing. They are available. I have offered

them to Howard. We have nothing to hide and they are readily available.

We will cooperate with any of you in any local promotions you will allow us to come into. We have been invited to participate in San Francisco. Bill Lacy, you may know more about this than I do. Johnny Swanson invited us in. We have been invited to join in a baseball promotion. We have worked with other associations and we will be glad to and we will pay our fair share. We don't expect a free ride.

One other point. We did not set up this Division to prove that we can operate centers better than anyone else because we don't think we can. We know, I think I know, there are many proprietors in this room know more about operating bowling centers than we know, and do better, but we are not picking up the good places. We are picking up the places that lack management or capital. We think we can do as well as the average. This is all we hope to do. If we can revitalize that and keep the business available, we have accomplished something.

We will be glad and we want to work with you people on taxation matters, on legislative matters, on local and national levels, and anything else we can,

and again we will pay our fair share.

Also, some of you have said, "Well, you have an advantage because you don't have to pay the same prices I pay." This is not true, gentlemen. My Division pays to Brunswich the same amount of money for every product that I purchase that you do. It's capitalized on my books. I must show the same kind of profits. In fact, I assure you I have more pressures on me than you have in most cases. And it shows up in the corporate books. The Directors look at it. It is capitalized. I can't buy pins for a nickel cheaper than you can. I can't buy bowling equipment for a nickel cheaper than you can. Other businesses have gone through this. Firestone has dealers and they own their own stores. They work on the same basis. Hart, Schaffner & Marx does this. R.C.A. does this. The R.C.A. Tube Division sells their Television Division and sells their competitors. This is different in the bowling business because it never existed before, but, follows, we have been forced into it. But we don't pay any more nor less than you do.

You should hear some of the arguments we have around the office. I don't see these guys much

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any more. I cannot get an item that is allocated or in short supply any more than the proportionate share of the business that I have. If I have 1% or a half per cent, it is all I can get if a new item comes out. I can't get any more than my pro rata share.

Now we have also heard rumors to the effect that we are doing certain things, that we are really not interested in selling these establishments. Any place that we have in our portfolio is for sale. The only exception to that at this moment is AIBC houses that we took over as a chain and that's because of some administrative details that still have not been worked out and it will take some time for that. But any of the other houses we have are available for sale.

Bellows, based upon our principle for value and to keep your product valuable, we are not going to sell these except as going businesses. We are not going to make the mistakes we did two or three years ago. We are going to require 30% to 50% down. We are going to sell them on a business basis as any other business is normally sold, based upon profits, cash flows and other considerations you would make in evaluating a business.

I called it ineffective management.

MR. LEVY: There were discussions in this industry and the fact there is a bowling establishment down the street and the answer came back, and stop me if I get into legal problems, it is always, "Yes, but he doesn't have good management, so therefore we are going to open up an establishment down the street about two blocks." - Now we are coming to the place where these places you opened up have bad management and you are going to take over and have people with six or eight weeks of training who have never been in the bowling business before, and you are going to have good management. Is it the fact you have better management or more money that you can carry on over a longer period of time because you have a little more money behind you to carry you through and maybe outlast the fellow down the street? This is the thing that is the crux of the whole thing.

MR. RUDO: Manny, I cited three examples of what caused business to fail. Capitalization, management, and location. I can't guarantee you - I said that, too, I thought that our management is going to be the best but we think this caused this to fail and based upon our evaluation we think this business

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potential. We hope, and we don't know yet because, God, we have only been in it five months, that we will be able to build the thing with the management we have hired and be able to sell the establishments. Now if I gave any other impression, I'm sorry. I said the three that cause failure, and what we hope to do, and in five months we are a long way from wizards in this business.

MR. LEVY: That is one of the real things we are talking abo is all three things you are talking about. And I think this is where you are at fault because you are the ones who found the locations in most cases. You had people out looking for locations. You put the houses in. You set the price and you set the down payment. And now all of a sudden the proprietor is the bad fellow because he can't pay and it becomes a bad deal. Now you are negotiating a lot harder than you did before. Listen, this is something that happened and you can't deny it.

MR. RUDO: What do you want us to do?

MR. LEVY: I ask you how you think you are going to become miracle men in a short period of time if it wasn't for the fact you have millions of dollars behind Brunswick to carry it on for a short

$9,000.

MR. LEVY: How big are the houses?

MR. RUDO: From 16 to 64 lanes.

MR. LEVY: Do you put a $9,000 manager in a 16-lane house? Could the property afford to pay that?

MR. RUDO: Yes. It's not our ideal. We also have $9,000 men running 64 houses. You are taking a small percentage and trying to twist the story. This you have to do across the board.

MR. LEVY: You are paying the same salary to a man running a 64-lane house as a 16?

MR. RUDO: Generally, yes. I don't say all our managers are getting only $9,000. Don't misinterpret it. Some we have inherited in the AIBC and Atlantic Chain we have to pay more.

MR. LEVY: You claim the houses you are taking over are all for sale. You require 30% to 50% down. At what price?

MR. RUDO: The price is based upon cash flow profit and return on investment. And they will run from a 16 to 24--lane house and we try to decide in five months, which is a basically short time to judge, whether we will sell that establishment for

$369,000. We have over a 50-lane house we would sell for $400,000, $497,000, actually, with $200,000 down. At least this is based upon the formula we have worked out.

MR. LEVY: In other words, you would be in a position to set the price high enough so you couldn't sell them.

MR. RUDO: That's not the intent. That's the accusation but not our intent.

MR. LEVY: How many people are there around who are going to pay you $200,000 on a bowling establishment in the present market? When you put a $200,000 cash price on it, you're going to keep it.

MR. RUDO: I don't think so, Manny. This is not what we are trying to do.

MR. LEVY: Is it logical to go from nothing to $200,000?

MR. RUDO: Is it logical to make the same mistake the second time?

MR. LEVY: It's logical to make another mistake the second time.

MR. RUDO: Yes, it is.

MR. ISAACSON: Mr. Rudo partially answered my question. He said they had taken over 60 establish-

MR. WILLIAMS: Milt, in your discussion you mentioned that you would keep these establishments until you find a suitable purchaser for them, and then you cited the four to six years, which is the average time that they would keep an automobile dealership.

MR. RUDC: That's what General Motors found.

MR. WILLIAMS: Do you have any set limit or does Brunswick have any set limit as to the time you would keep these, or is it just a matter of an indefinite period of time?

MR. RUDC: We have not set a limit. Remember, this is new to us. Maybe we have made a mistake. Maybe we are on the right road. There could be a lot of things. I may be looking for a job a year from now and somebody else may be operating this business because I'm not doing it well. Our Company and the management of our Company expect it to be put on a profitable basis. This I can tell you. Time alone will answer this. I can't tell you the time and I would be silly to stay here in such a period of operation. It is one of these things we haven't communicated with you people. The fact is, we just

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started and we really didn't know our operations. Howard and I had lunch a month ago and this is one of the points I made. I don't think I could be justified in setting it higher with you fellows who are experts except that we should talk to you and you understand why we are in it.

MR. WILLIAMS: Has Brunswick, prior to B.C.O., had any similar type of operating company or have you had any method of running establishments prior to B.C.O.?

MR. RUDC: We ran places overseas during the last two years.

MR. WILLIAMS: Not domestic?

MR. RUDC: Back in '36 or '40 we ran some. Red Crown. Up to this time, no, not to my knowledge. There was one house in Wichita, wasn't it, Jack? We were in Hawaii and found out we were running it. But up until we formed B.C.O. we were not running any establishments.

MR. WILLIAMS: Then my next question is to Mr. Stefan, your legal counsel. Would Brunswick be a part of any of the suits or actions that are pending in various associations and also the National Association by virtue of the fact B.C.O. now has

MR. BRINEAN: I have a little memory of it at the time.

MR. RUDO: I had just come with the Company. We were still operating a couple.

MR. [illegible]: Nothing.

MR. HINDEL: I would like to direct a question to Milt about your general philosophy, Milt, on methods of operation. I'm not going to use the word "price" at all, but your general philosophy. I'm speaking of the yellow sheet that is printed in red, which is not only distributed within your own establishments, but in establishments in other cities adjacent to yours. I wonder if you could answer this for us?

MR. RUDO: This is a program that we have adopted, Carl. We had a problem when we went into operation as to all the programs that should be utilized. We adopted a program that has been utilized, in fact, every one that has been used by one of your State Associations or County Associations some place in the United States, and if you want me to I would be glad to read off where that is.

MR. HINDEL: And give-aways.

MR. RUDO: I don't know what you mean by give-aways.

MR. HINDEL: You have a $5.00 free coupon book.

MR. RUDO: It's made up of ten different colors. If you bowl for 12 weeks in one of these establishments in a summer league you are entitled after August 15, if I remember correctly, to one game of bowling a week for ten weeks thereafter. We think that people don't come in and bowl one game. We think people will come in and bowl and we think in the fall of the year, when play has been off for the last four or five years this will stimulate people to come in. It is not a matter of all of them used at one time. It is one game a week that can be utilized. If you want to talk about give-aways, I know people in Evansville, Indiana, where they are giving away mink coats and trips to Europe. I don't know the difference between give-aways and promotion. I say this and I am trying to find out what it is and learn.

MR. HINDEL: Isn't this contrary to your philosophy?

MR. RUDO: No, sir. What are give-aways and what are promotions?

MR. HINDEL: I can't answer it.

MR. RUDO: The Wheaties deal with

National; the Tide deal with National. These are these kind of promotions. I don't know the answer. I think this is the thing we are trying to build and get people to come in during the early season.

MR. HINDEL: Regardless of where these people come from? In one instance leaflets were passed out 14 miles from your establishment where there is another establishment.

MR. RUDO: Is it a draw, Carl?

MR. HINDEL: I don't know.

MR. RUDO: I don't know, either. This is a matter of the solicitation of business and where do the people come from? I don't know.

CHAIRMAN GOLDBERG: I didn't want to interject myself yet but along the line Carl said, I must assume you know the details of this. This is one I brought. It was in our area before Brunswick got into the operating business by A.I.B.C., but it was my understanding these books were given out to every bowler in the winter league for use of one game per week in the summer. And then if you went in the summer you got one in the fall.

MR. RUDO: I haven't been in a winter

CHAIRMAN GOLDBERG: Of course, maybe you inherited some problems that were given out kind of indiscriminately by the manager and it wasn't necessary for everybody to be in the winter league. But I think what Carl's concern is the concern of all of us, that the success of the Brunswick recovered houses is going to be at the expense of their neighbors in the bowling business and it isn't going to do the rest of us any good. After all, all you are going to do is take. If he gets a free book he is going to bowl in one of these houses and we are not going to accomplish anything other than giving some stuff away, which is the easiest way to do it.

I agree with Carl, you people have been in favor of the operator getting a fair price so he can pay his bills.

MR. RUDO: I'm in agreement and that's the basic philosophy. Again, I have not interpreted in my own mind what is a give-away and what is a matter of promotion. If our people have not utilized these properly, it comes to what Buddy Russell is talking about, it's the controls and those things, and I say we'll get to them and get squared away. We can't even write and complain about inaccuracy because Mr.

Stefan says we'll be joining in price fixing if we write and complain about your houses doing some unethical thing that you don't even know about. We are not trying to do anything but run this business so it will be profitable. It is our intention to do that.

Let me ask you a question. If you are in a market and somebody is running bowling for 25¢ and you are getting 50¢, do we have a right to write to you and complain? That has happened in Carl's area, a man who is an official of the Indiana Bowling Proprietors' Association. He advertises right here in my book.

CHAIRMAN GOLDBERG: You mean, you are operating in the area?

MR. RUDO: We are in Indiana. If we're in Indiana, I understand we're in trouble. We're operating at 50¢ and this man is selling bowling for a quarter.

MR. STEFAN: Just as we can't agree on pricing, I don't think we can agree either on what promotion is, which we will engage in and which we won't. If within our judgment we think promotion is good for us and bowling generally, I don't think we should or can be retained from resorting to it because

you don't like it, legally, you know.

CHAIRMAN GOLDBERG: We don't want to restrain you but the point is it would seem to me you have a stake in the business, this 400 million or 4 billion you stoke of that people owe you. So in addition to the 60 houses you have thousands of customers you hope will pay you each month over a period of time. When you arrive at in your judgment what is good for bowling promotion and it helps to put a substantial number of these other people out of business if it should, seems to me somewhere along the line somebody has a right to say something.

MR. STEFAN: You are bringing it to our attention in terms of our own self-interest.

MR. RUDO: Our interest is your interest. Any of our promotions are available to any of the people who want to utilize them. In fact, in one specific case a whole association adopted this.

CHAIRMAN GOLDBERG: Well, Milt, with these kind of promotions we don't need any self-help.

MR. LEVY: What are you doing to promote new bowlers? You are in the bowling business, what are you doing to promote new bowlers?

MR. RUDO: In the State of Indiana,

in the five or six towns we have been in, we have found the operators there never even went into the schools. This is a chain of six establishments we took over, two 16's and four 24's. And I was told in these towns they had never approached the schools. They didn't even know whom they were to contact. We have gone in there and we have done the same things you do.

MR. LEVY: What have you done in areas where they have gone into the schools?

MR. RUDO: Specifically, we have run "Learn To Bowl" and telephone solicitations, we have run door-to-door solicitations. We are doing the same things, exactly the same things. And it's our intention to build bowling.

CHAIRMAN GOLDBERG: I guess I got the thing off the track there. Tim.

MR. HALLIGAN: I don't like 4-letter words and especially I don't like this "free." Milt, you mentioned this is a new experience to you, that you pinpointed two houses, a 24-lane house and a 50-lane house and with the so-called down payments you said it would pay off in seven years. You haven't experienced the summer months yet.

MR. RUDO: I said it was a limited deal.

I based this on our operations from March through May on one house. I agree with you. But if somebody wanted to buy them today, this is the price we would sell for based strictly on our limited deal. People have said we don't want to sell them. I have brought two examples here that we want to sell. The price can go up and it can go down, too.

CHAIRMAN GOLDBERG: Is there anyone else wishes to say anything? Well, thank you, gentlemen, for coming. We have appreciated it.

(The Brunswick representatives retired from the room)

CHAIRMAN GOLDBERG: Gentlemen, this is Dale Harland, general counsel, and Mr. Clint Brimm, the Past President of the Oregon State Association. You will go right into your pitch, Mr. Harland.

MR. HARLAND: Our Association, as you know, has recently been sued on a civil anti-trust matter by Pacific Lanes, who secured a rather large judgment against the Washington State Proprietors' Association in Pierce County and certain individual defendants. We were not involved directly in the Washington suit. We read in the newspapers what was going on. We had no particular contact with the suit.

BEST COPY AVAILABLE

with 209-557 and Carl
off with 202 in a 545 series.
fine series were rolled by
ackett with 193-539, Alan
ll 194-534, Phil Larson 202-
ug Larson 181-518, John
son 193-518, Richard
170-502, Jeff Modic 176-

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AS MIKE MARISCAL HITS 677

BY CLYDE WATANABE

HOLLYWOOD—Little brother Weege and sister Kathy can no longer poke fun at big brother Mike Mariscal. After a couple of years of near misses of the elusive 600, Mike clutched in high gear and soared to cloud nine with 211, 200 and 266 for a fantastic 677 series at Hollywood Star Lanes. (There goes your low book average). This series came after last week's 593.

Daring Dave Levin sizzled a crisp 208-576, Rick Johnson added 202-561, Stepan Keshishian 523, Marty Arslanian 510, Chris Caldwell 517, Jack Jones 517, Dino Mastro 210, Mike Goto 222, Wayde Watanabe 209 and Maren Edwood 189-442.

Falling to new heights in the King Junior High League was James Takemoto with 210-209-614, Jenny Herting had 159-354, Gary Funada 349, Dan Colman 322, Ross Lake 373, Dale Chandler 411, Brian Lewis 204-452, S. Shigemasa 338 and over-whelmi[ng] [a]l 425. [T]urday [p]ool 157-[3]-473, John [C]h for [S]mida 404 and Rocky Walsh 407.

In the Adult-Juniors, the Cameron 378, Nancy Bearnth 166 and overdue awards of 246, 105 pins over average and a 246 trophy. Brad Loveman had 392 and Mando Nalbandian 190-460.

The almost-but-not-quite over the hill gang hit: Eldon Jamison 201, Ralph Eisenbise 515, Bill Moigis 533, Joni Bernier 443 and Mona Rodriquez 375.

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NEW FORMAT!
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RAGTIME DOUBLES TOURNAMENT
WEEKLY GUARANTEE
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BOWL-INN BREAKFAST
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9 AM - Noon
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Complete Breakfast • 3 Games • Free Shoes

A1835
Exhibit P75

...ecoming
... Miami,
...ins Super

...ciated Press.
...,000 chanting, singing
...ering fans gave the
...Dolphins a tumultuous
... home Monday night as
...on Shula and his his-
...king team brought home
...y's first Super Bowl
...nship.

...n't tell you how much
...eans," said Shula. "I
...0 says it all — the world
...nship."

...while, the Washington
...s returned to the na-
...apital Monday night to
...ers of a small group of
...s who somehow man-
...bypass security guards.
...g those greeting the Dol-
...s C.G. "Bebe" Rebozo,
...de and Key Biscayne
... of President Nixon. He
... to a floodlit platform
...k hands with Dolphins
...g partner Joe Robbie.

...i, who rooted for the Red-
...ayed behind at the Flor-
...de House. However, ear-
...nday he telephoned his
...ulations to Shula in Cali-

...i Beach Mayor Chuck
...o called himself the "of-
...welcomer," commented,
...s a certain spirit taking
...e town. For the first
...everybody is smiling.
...e all happy. We can be
...of our world champions —
...ole city, all 28 municipal-

...usually reserved Shula
...ervescent as he held the
...ng Super Bowl trophy
...anked those among the
... who had welcomed his
...ly disappointed" players
...they returned as losers
...ar from the Super Bowl
...n which Dallas beat them,

... said that night that we
...come back and bring the
...ionship to Miami. This is
...his team was able to ac-
...sh," he said.

...rly 150 fans were at Red-
... Park at 7:55 p.m. when
...m arrived from Dules In-
...ional Airport, only a few
... away in suburban Vir-
... although team officials
...nade known they didn't
...a big reception.

...e tried to warn fans away
... the Redskins, fearing a
... jam on the only access
...o Dulles.

...idn't think we would have
...ype of turnout after a
... said Coach George Allen.
...of the good things about
...ear has been th[e] fans. We
... expect this kind of recep-
...especially at 8 p.m.
...re is no reason why we
...be in the Super Bowl next
..." he said to the cheers of
...owd, many of whom had
...d in the 40 degree weather
...me five hours.

Gould Honored
...Associated Press (AP) —

Omaha World-Herald
Sports

OMAHA, TUES., JAN. 16, 1973 19 *

Husker Harris Laughs Last

By Robert Williams
World-Herald Sports Writer

Lincoln — Lee Harris, the University of Nebraska junior, admits he smiles on the basketball court.

And he beamed in rebounding a missed Alvan Adams basket to set in motion a Husker move down court that tied, 58-58, in a 74-67 victory over Oklahoma Monday night.

The Huskers didn't lead until Harris's 20-foot jump shot from the top of the key with 4:40 to play. That put N.U. ahead, 60-58, and the crowd cheered shrilly in delight.

The Sooners broke to a 10-0 lead — while the Husker partisans in the crowd of 4,200 waited patiently before being seated.

Customarily, they remain standing until the first N.U. points.

Brendy Lee scored a layin with nearly three minutes of playing time elapsed — and the fans could be seated. But they would stand again at the game's end to root home the victory. Later, Coach Joe Cipriano was to credit the 6-8 Lee with doing an outstanding job defensively on Adams, the Sooners' 6-9 freshman.

Adams ended with 23 points, but was without a field goal for more than 20 minutes after connecting 12 minutes before the half.

Harris joined Cipriano in lauding Lee. "Twenty-three is a lo[t] different than 38," Harris noted referring to the number o[f] points Adams scored at low[a] State two days earlier.

Adams led scoring and Harr[is] scored 22, high for the Huskers.

Harris, a 6-2 product of Ce[n]tral High in Omaha, said [he] "didn't have any kind of touch in his shooting because of bat[ter]ing the flu.

However, he said his qui[ck]ness had returned after dese[rt]ing him during a 68-55 loss [to] Oklahoma State two nights e[ar]lier. The Saturday and Mon[day] games are the only Big E[ight] encounters the Sooners Huskers have played.

Harris welcomed the res[t] until Jan. 27 and a visit by [Mis]souri — "so that I can get w[ell]"

Cipriano credited Harris grabbing important steals.

Sophomore forward Don J[ohn]son (6-7) is another Husker was praised by both Cip[riano] and Coach John MacLeod o[f] Oklahoma.

Jackson connected on se[ven] 13 field goal attempts in point performance, his be[st] the Huskers' 6-8 season.

The Huskers, despite [a] to more than two inch[es] height per man in their line, outrebounded the So[oners] 43-39. Lee grabbed 12, one than Adams, the Sooner [top] sonal leader in that depar[t]ment.

The Huskers gained the

—World-Herald Photo

C'mon, snow, melt! . . . Turning first spade are, from left, Edwards, Mrs. Schoon, Dollar and Melonis.

In New Omaha Center

Computers to Score Bowling

By Rich Pearl

The first spade of dirt — whoops, make that snow! — was turned Monday to start construction of the first new bowling establishment to be built in Omaha in some 14 years.

The ceremony in the melting snow was held west of the corner of Mockingbird Drive and Ninety-sixth Street, south of L Street.

Present were representatives of the Brunswick Corporation of Skokie, Ill., who will own and operate the 32-lane, $1 million facility, and the secretaries of Omaha's men's and women's bowling associations.

The group included James Chauncey of Denver, Brunswick's regional manager; Wayne Dolylars of Kansas City, Brunswick's district manager; Lloyd Edwards, manager of the new facility and Darlene Schoon and Ted Melonis, the Omaha association secretaries.

'Potential Over 1,500 Per Lane'

Edwards, 38, who formerly managed Brunswick's South Milwaukee, Wis., bowling establishment, is taking bowling league applications at 339-8858 when he isn't seeking living quarters for wife Diane and daughters Lorri and Michela.

Brunswick and Timmons Construction Co., the general contractor, are shooting for a July 15 opening date, Dollar said.

The bowling center, the first Brunswick owned in Nebraska, will be "the most modern in the world" when it opens because it will feature computerized automatic scoring, Chauncey said. The system employs automatic pinsetters with sensors that relay information to computer units for scorekeeping.

All the bowler does is identify himself and roll the ball, Chauncey said.

The Omaha area "is the best-looking market area for bowling I've ever seen," said Chauncey, who said Brunswick had seven different people surveying the area before the firm decided to build.

"We figure that 1,500 bowlers per lane" is needed to make a facility successful, he said. "Anything above that is gravy." He indicated Brunswick believed the area was better than 1,500 per lane.

The [Mockingbird] Lanes

Tickets Available For Sports Fete

Tickets for the Omaha Sportscasters Association banquet will be on sale until 6 p.m. today at City Auditorium.

The banquet will be at 7:30 p.m. Wednesday at Peony Park. The event will feature ex-Omahan and former Chicago Bears' running back Gale Sayers as the sportscasters' man of the year.

Ex-Green Bay tackle Henry Jordan will be the principal speaker.

Tickets also may be purchased from sportscasters.

Those at the head table will be four previous recipients of the award. They are Stan Bahnsen, Bob Boozer, Bob Devaney and Bob Gibson.

Bill Would Require State Horses to Run

World-Herald Lincoln Bureau, Room 3, Executive Building.

...Nebraska race tracks to

A1836
Exhibit P76

lisr," he said.
urly 150 fans were at Red- Park at 7:55 p.m. when am arrived from Dulles In- tional Airport, only a few away in suburban Vir- although team officials made known they didn't big reception.
ice tried to warn fans away the Redskins, fearing a jam on the only access o Dulles.
didn't think we would have type of turnout after a said Coach George Allen. of the good things about ear has been the fans. We expect this kind of recep- especially at 8 p.m.
ere is no reason why we be in the Super Bowl next " he said to the cheers of rowd, many of whom had d in the 40 degree weather me five hours.

Could Honored

ney, Australia (AP) — pic champion swimmer Gould, 16, has been d the Australian Athlete of ear for 1972.

ohnny R!

ed a long set shot from the

t h at set, he declined a er invitation to pivot, drib- nto the lane, wiggle—and shoot a layup.
per was the Rodgers s point leader with 20. Pitts 0, Blahak, who used foot- econdary talents in break- o Thriller passes—got four lover and Dixon two each.
m an entertain- standpoint, the Rodgers lacks sufficient hijinks— gh the Thrillers have . Johnny R and pals may ady with a football wedge on the court when they in- the University of Nebraska maha Fieldhouse tonight 10.
g Pruitt, Oklahoma grid- ho was supposed to be a ers cage teammate, re- ily missed a plane in on.
ahan Bob Rodgers, no re- to Johnny, officiated the and blended in sharply the comedy.

bowling associations.

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Bill Would Require State Horses to Run

World-Herald Lincoln Bureau, Room 2, Executive Building.

A bill to require Nebraska race tracks to have one race a day with Nebraska-bred horses was introduced Monday in the Legislature by Sen. Harold D. Simpson of Lincoln, who said it is aimed at Ak-Sar-Ben.

"The Ak-Sar-Ben Race track in Omaha has used what you might call subterfuge to avoid this regulation," Simpson said.

He said there is a Racing Commission regulation requiring one Nebraska-bred race each day of race track meeting but that a track can avoid having such a race on the ground there aren't enough state horses available.

"We have plenty of Nebraska horses now," Simpson said. "I believe this regulation should be given the force of law. It will help a Nebraska industry."

Race tracks in the state include Ak-Sar-Ben, Grand Island, Lincoln, Columbus and South Sioux City. The Ak-Sar-Ben meeting is held from May until July, Simpson said.

Officials Exclude Anthem

New York (AP) — "The StarSpangled Banner," which has been met with something less than respectful attention by some athletes in recent sports events, will not be on the program for the Olympic Invitational track and field meet at Madison Square Garden.

Jesse Abramson, director of the Feb. 16 meet, says the national anthem will not be played because his staff "couldn't find a spot for it."

Abramson said the decision to drop the anthem from the track meet's program—making it the first of more than 500 athletic events to go on without the anthem since the new Garden opened five years ago—was made last month.

struction Co., the general contractor, are shooting for a July 15 opening date, Dollar said.

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The Omaha area "is the best-looking market area for bowling I've ever seen," said Chauncey, who said Brunswick had seven different people surveying the area before the firm decided to build.

"We figure that 1,500 bowlers per lane" is needed to make a facility successful, he said. "Anything above that is gravy." He indicated Brunswick believed the area was better than 1,500 per lane.

Brunswick Mockingbird Lanes will be the first totally new establishment in Omaha since 1959, when Ames Bowl and Sky Lanes first opened. Sky Lanes re-opened at its original site in 1970 after a fire forced complete rebuilding.

Gretna Bowl, built in 1966, is currently the newest establishment in Douglas County, according to Melonis. The Omaha metropolitan bowling area — which exclude the area east of the Missouri River — now has 28 bowling etablishments and 454 alleys (including Gretna, Elkhorn, Bellevue and Offutt Air Base).

The men's association numbers around 17,000, with 413 men's and mixed leagues. The women's group has about 16,200 bowlers with 222 leagues.

"I think it's marvelous," said Mrs. Schoon of the new facility. "We have some pretty antiquated bowling centers here and I think the public likes to go into new and well-kept places to bowl."

She said she hopes area bowling centers will now give more 6:30 p.m. league spots for women. "Most now give us 9 p.m. and after, but I think it's safer for men to be out at that time than women."

in his shooting because of battling the flu.

However, he said his quickness had returned after deserting him during a 69-55 loss to Oklahoma State two nights earlier. The Saturday and Monday games are the only Big Eight encounters the Sooners and Huskers have played.

Harris welcomed the rest — until Jan. 27 and a visit by Missouri — "so that I can get well."

Cipriano credited Harris with grabbing important steals.

Sophomore forward Don Jackson (6-7) is another Husker who was praised by both Cipriano and Coach John MacLeod of Oklahoma.

Jackson connected on seven of 13 field goal attempts in a 14 point performance, his best in the Huskers' 6-6 season.

The Huskers, despite giving up more than two inches in height per man in their front line, outrebounded the Sooners, 43-39. Lee grabbed 12, one fewer than Adams, the Sooners' seasonal leader in that department.

The Huskers gained their first tie at 34-34 on Cal Christine's tip less than a minute into the second half.

But the Huskers were to trail

Please turn to Page 20, Col. 4

Hayes' Plea Is 'Innocent'

Pasadena, Calif. (AP) — Ohio State University football Coach Woody Hayes pleaded innocent Monday to a misdemeanor charge of battery filed after an altercation with a press photographer.

The plea was entered in Pasadena Municipal Court by attorney Andrew R. Edwards. Hayes, free on his recognizance, was not present.

The charge was filed after an incident before the New Years Day Rose Bowl game here, in which Los Angeles Times photographer Art Rogers said Hayes pushed a camera into his face.

Rogers claimed he received facial injuries and that his vision was impaired.

Municipal Court Judge Samuel Laidig granted Edwards' request for a pretrial hearing. It was set for 9 a.m. Feb. 22.

ıl Cheering Section as Jays Invade California

ompeted last hton won, 90- had 25, Ted e Ellefson 13 for the Jays. s point to a

nd Bobik and West Coast with Ralph's brother, Bob Carol, 9. d teammates ph said of his, oast cage ea- each a group ected, includ- from Bobik's n Church. 'haven't seen

win three games," so the coast fans may be in for a treat.

Al Lewis, who flipped 21 points against Regis last year, will be absent, missing the trip because he left the Wyoming game at the half last Saturday night in the City Auditorium Arena.

Al hadn't played the first half. The usual starter said Monday that his "teammates were enthusiastic where I couldn't feel enthusiastic" during the 79-69 win over Wyoming.

"I know I haven't been playing as good as I can but I don't like to sit on the bench," said Al, who is bothered by sinus trouble.

and I hope he will come back," Coach Eddie Sutton said.

"I wouldn't come back if any of the players felt I was cheating the team," Al said. The Jays apparently don't feel that way.

How about the trip?

"I just hope they win," Al said.

Creighton Statistics

	G	Fg	Fga	Ft	Fta	Reb	A	Tp
Al Lewis	19	4	11	13	17	5	2	21
P. Bobik	19	4	11	10	12	10	2	18
T. Wurdeman	19	3	10	2	3	7	2	8
G. Ellefson	19	6	16	1	2	12	1	13
Ch. Butler	19	3	8	2	3	5	1	8
[illegible]								
[illegible]								
[illegible]								
[illegible]								

A1837
Exhibit P76

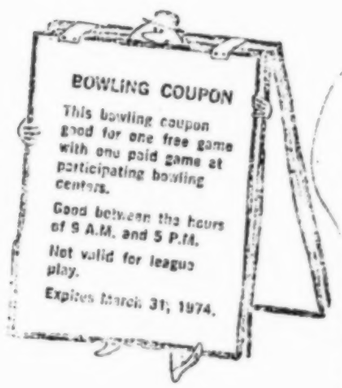
STRIKE

This rings the bell!

NBC/Colgate-Palmolive Joint Bowling Promotion Finalized

$34.36 PER LANE TO BE SPENT BY COLGATE-PALMOLIVE FOR EVERY BOWLING LANE IN THE U.S.A.

PLAINTIFF'S EXHIBIT P-77



HERE ARE THE DETAILS:

1) 100 million coupons good for one free game of bowling with the purchase of one game would be printed on Ajax All-Purpose Liquid, Cold Power, Detergent, and Palmolive Dishwashing Liquid. This production would hit the shelf on or about May 1, 1973 and would be virtually exhausted by 12/31/73.

2) June or July would be National Bowling Month and the majority of the promotional support for the program would be run during this period.

3) In support of the program, the following expenditures in media value would be made by Colgate:

TV Advertising	$2,000,000	Product Support	$1,700,000
Radio	300,000	Display Material	50,000
Print	300,000	Dealer Loader	100,000
Co-op Advertising	100,000	Total	$1,850,000
Total Advertising	$2,700,000		
Grand Total	$4,550,000		

4) Bowling Proprietors operating not less than 75% of all bowling lanes must agree to participate by February 28, 1973.

PROPRIETORS — SEND IN YOUR AGREEMENT TODAY!

Yes, We agree to participate in the 1972 Colgate-Palmolive Bowling Promotion as outlined above. Please list our center whenever participating centers are listed and print advertising as follows:

Name of Center .....

Address .....

Signed .....

A1838
Exhibit P77

NBC NEWSLETTER

NATIONAL BOWLING COUNCIL

1128 16th STREET, NORTHWEST, WASHINGTON, D.C. 20036 202-659-1570

American Bowling Congress
Milwaukee, Wisconsin

AMF Incorporated
Westbury, N. Y.

Bowling Proprietors
Association of America
Chicago, Illinois

Brunswick Corporation
Skokie, Illinois

Columbia Industries
San Antonio, Texas

DBA Products Company, Inc.
Lake Bluff, Illinois

Ebonite Company
Hopkinsville, Kentucky

National Duckpin Bowling
Congress
Washington, D. C.

Professional Bowlers
Association
Akron, Ohio

Vulcan Corporation
Cincinnati, Ohio

Women's International
Bowling Congress
Columbus, Ohio

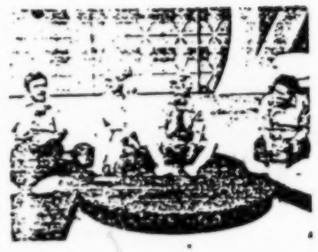
Volume III, Number IV, September/October 1972

PLAINTIFF'S EXHIBIT P-78

COLGATE-PALMOLIVE TO SPEND $3,000,000 TO PROMOTE BOWLING DURING A 1973 FUN BUCKS PROMOTION. The National Bowling Council and the Colgate-Palmolive Co. have agreed to sponsor a giant nine-month promotion beginning in April of 1973. Prospective bowlers will find a Fun Buck on Palmolive Dishwashing Liquid, Cold Power, Ajax All Purpose Liquid Cleanser, Wilkinson Shaving Products, and other Colgate household products. This Fun Buck can be taken to a participating bowling center and exchanged for a A FREE GAME FOR EVERY PAID GAME. Redemption can take place from 9:00 AM to 5:00 PM, seven days a week, plus any other times made available by participating centers. Colgate-Palmolive will place not less than 120 million Fun Bucks on the products involved during the nine-month promotion with a notice or tag on the front, calling attention to the special bowling offer. In addition to $2,250,000 being spent on TV and radio advertising and $750,000 in store and cooperative advertising, Colgate-Palmolive is considering a direct mail piece to more than 15 million households calling attention to the bowling offer. Colgate-Palmolive will also cooperate with the National Bowling Council in advertising in local newspapers listing all participating bowling centers. Bowling proprietors are urged when they receive complete details of this promotion this fall to return the card with their agreement to participate so that NBC can include their bowling centers in these newspaper advertisements.

At the BPAA Convention in Honolulu in June, the Fun Bucks Promotion received a very enthusiastic endorsement. According to proprietors there, "Fun Bucks is a natural promotion and should result in a substantial lineage increase over the usual bottom line." With four times as much money being expended to promote bowling as during the Post Cereals Promotion, everyone in the bowling family cannot help but profit.

A1839
Exhibit P78



JUDI ON THE MIKE DOUGLAS SHOW. Judi Ford, the National Bowling Council's Miss Bowl-A-Shape, taped a 7-minute segment of the popular Mike Douglas TV Show on August 15. Judi instructed Mike, his co-host Florence Henderson of the "Brady Bunch" TV Show, and Miss Henderson's 77-year old mother in the Bowl-A-Shape Exercise Program. The show will be viewed this Fall in 125 markets before an estimated audience of 15 million.

FALL ADVERTISING CAMPAIGN. The Fall 1972 Advertising Campaign is shaping up well with what looks to be a record-number of proprietor groups lining up to tie in. The Council's Fall campaign led off with Howard Cosell's radio reports from the 1972 Summer Olympics. In October, the National Bowling Council will again co-sponsor the telecast of the 1972 World Series, the largest sports audience show in the world. This year, the Council's commitment for the World Series is almost double that of 1971. Last year, the National Bowling Council bought spot ads on the first four games; this year, we have the W-H-O-L-E thing...all seven games, if the Series goes that far. That's 300,000,000 bowling messages to the TV viewers of the 1972 World Series.

30% SUBSIDY. To encourage even more local participation for what the Council feels is one of its greatest advertising campaigns, the normal NBC 20% media subsidy has been increased to 30% for those proprietors who tie in with the National campaign between August 1 and November 30. This new subsidy amounts to $3.00 for every $7.00 raised locally. For instance, if a proprietor group raises $7,000 for its campaign, the Council will add $3,000 making a campaign total of $10,000 worth of media advertising! In addition, of course, the Council has displays, television spot announcements and newspaper mats. Please contact Council headquarters for more information - but hurry, the 30% subsidy period is already underway.

PRESIDENTIAL BOWLING AWARD. By the time this Newsletter reaches its various destinations, most proprietors will have received the initial mailing from the National Bowling Council consisting of

A1840
Exhibit P78

colorful wall and desk posters, record books, and full instructions to enable their customers to participate in the Awards Program. To obtain the Presidential Award, a bowler must complete a minimum of 150 games within a four-month period with no more than five games being played on any one day. The sets of five games must be bowled on at least 34 different days. In other words, the candidate for the award must bowl about 9 or 10 games a week with no more than 5 being credited for any one day. League games will count in the total. The goal of the President's Council on Physical Fitness and Sports is to establish a set pattern of physical exercise. The award will consist of a patch, a lapel pin, and a certificate signed by the President. The bowler will keep his own record in the sheet that will be provided by the proprietor.

BOWLING ON RADIO. To better serve the thousands of radio sportscasters through the U. S., the National Bowling Council has begun a pilot program of taped interviews with bowling's greats of yesterday and today. The pilot phase will provide information about the types of subjects most appealing to the top 100 stations across the country. This is a most effective means of providing the materials to each sportscaster. After evaluating the pilot, the Council expects to supply a regular series of radio tapes to announcers throughout the year.

VARIPAPA ATTENDS OLYMPIC DINNER. Andy Varipapa, one of the National Bowling Council's Traveling Ambassadors, attended a dinner in Washington, D. C. on August 17 sponsored by the President's Council on Physical Fitness and Sports. Andy's attendance was a natural at the dinner honoring our 1972 Olympic Team and such great sport stars of the past as Jessie Owens and Bob Mathias.

While Andy was in town, the up-coming NBC film clip featuring the Fifty-Plus Program was filmed. This clip will be made available to TV sportscasters nationwide. It tells the story of who Andy is and what he has done for bowling. After Andy presents a repertoire of his trick shots, he tells his captivated audience about the Fifty-Plus Program and its benefits to senior citizens. Andy was 81 years old in March!

PAULA SPERBER AND FLIP WILSON APPEAR ON THE TONIGHT SHOW. On June 12th, the nation's late night TV viewers were treated to a bowling segment on Johnny Carson's Tonight Show. Paula Sperber - bowler of the year - met Flip Wilson - comedian of the year - in a fun-filled episode. Mr. Wilson gave Paula a bowling lesson that won't soon be forgotten by the lucky millions watching that evening.

INDUSTRIAL LEAGUE KITS. The National Bowling Council has again prepared an Industrial League Kit for those proprietors who wish to encourage bowling participation within neighborhood, business or industry. The kits contain posters announcing league formation and payroll stuffers to sign up employees. Also included are pamphlets for industrial recreation directors outlining league formation and the popular "Bowling is Fun" Pamphlet. Complete kits are available from the NBC Washington Office at cost.

"EBY" EBERSOLE RETIRES AS BVL DIRECTOR. Arville L. Ebersole, who guided the Bowlers Victory Legion through almost 30 years of service to hospitalized veterans, has retired as BVL Director. Eby, as he is known to thousands of bowlers and veterans throughout the country, has assumed his new position as Director Emeritus of the BVL Fund. Eby will retain his role as Executive Secretary of the National Duckpin Bowling Congress, a position he has held for 32 years. The administrative and operational functions of the BVL will be assumed by the offices of the National Bowling Council.

National Bowling Council
1128 16th STREET, NORTHWEST
WASHINGTON, D.C. 20036

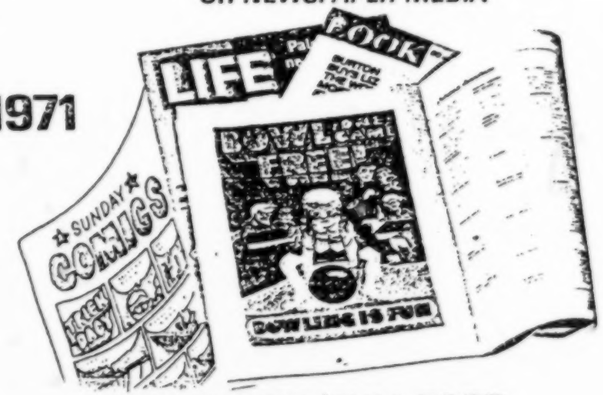
A1843
Exhibit P79

PRINT MEDIA

EITHER LIFE AND/OR LOOK
OR NEWSPAPER MEDIA

1970

1971



FULL COLOR/FULL PAGE
on"Bowling is Fun"
+½ page listing participating centers

1971 TOTAL MEDIA PROGRAM WILL GENERAT

PACKAGE EXPOSURE

1970

60 MILLION
Front panel patch & certificate on all 60 million

1971

New this year
20 MM ½
back panels

New this year
20 MM full
back panels

New this year
20 MM full front
panel patches

60 MILLION
Front panel patch & certificate on all 60 million

A1844
Exhibit P79

NEW THIS YEAR
TV ADVERTISING

Commercials devoted exclusively to the Bowling Promotion

HUNDREDS OF MILLIONS OF IMPRESSIONS!

DIRECT MAIL COUPON

1970

22 MILLION

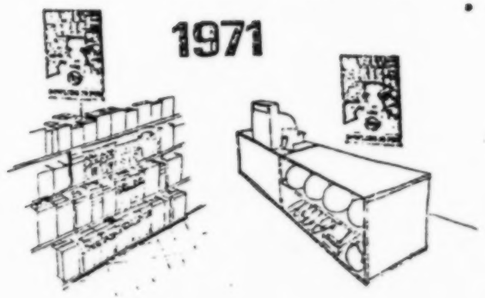
1971 Twice the exposure this year

22 MILLION

MERCHANDISING SUPPORT

1970

1971



A1845
Exhibit P79

THIS PROGRAM WILL PROVIDE

- MAXIMUM EXPOSURE
- GENERATE TRAFFIC

BUILD YOUR BUSINESS!..

TAKE FULL ADVANTAGE OF ALL PHASES OF THIS PROGRAM-

To insure your Bowling Center will be listed in LIFE and/or LOOK-or newspaper media

SIGN UP NOW!

A1846
Exhibit P79

PLAINTIFF'S EXHIBIT P-80

Brunswick CORPORATION
OFFICE OF THE CHAIRMAN OF THE BOARD

Dear Stockholders:

In the May 1 issue of Forbes Magazine, you may have seen an article about the Company which may have caused you concern as it did us. Attached you will find a news release which, I believe, explains the Company's position.

To put it simply, the earnings which we have reported to you are fairly and accurately stated, and reflect the true operating results of the Company.

The news media did not accept our release since they consider it to be a part of a private controversy between Forbes and Brunswick Corporation, so we are taking this means to bring it to your attention.

John L. Hanigan

5401 OLD ORCHARD ROAD / SKOKIE, ILLINOIS 60076 U.S.A. / TELEPHONE 312 · 982 · 6000

A1847
Exhibit P80

NEWS from Brunswick CORPORATION

One Brunswick Plaza Skokie, Ill. 60076 982-6000

The following statement was issued by Brunswick Corporation April 27, 1972:

This week a misleading article about Brunswick appeared in FORBES magazine (May 1, 1972) that contained misstatements, distortions, and innuendos reflecting on the quality of the Company's reported earnings. The Company's management believes it has an obligation to its shareholders and investing public to set the record straight.

The major thrust of the article is a very damaging suggestion that Brunswick's turnaround and reported profits since 1965 are "not true operating profits," but rather are "inventory profits" resulting from the fact that Brunswick "wrote off too much" in 1965 "when the bowling boom collapsed."

The fact is that in 1968 the Company recognized that its reserves were $8,500,000 greater than needed, but the reversal of this amount was reflected as an extraordinary credit and not as part of operating income. This was clearly disclosed in the Company's 1968 Annual Report to shareholders.

Furthermore, no profit at all was recognized on the resale or lease of repossessed bowling equipment inventories prior to 1968. In 1968, the Company began to reflect resales and leases of repossessed bowling equipment in consolidated net sales and revenue, but included only a normal gross margin in operating income. The effect of this change in accounting on 1968 consolidated net earnings was $610,000, or about 3¢ per share and was also clearly disclosed in the 1968 Annual Report to shareholders. Since 1968, the amount of repossessed bowling equipment was declining and earnings from sales and leases of such items have been less than in 1968.

In addition, the article implies that substantial operating profits have been contributed by retail bowling operations, repossessed and operated by the Company. In fact, to avoid taking additional equipment back into inventory, Brunswick operated such bowling centers, and during the first few years after takeover, suffered significant operating losses and negative cash flows. While the retail bowling center operations are now profitable, this was accomplished only after considerable time and effort by management coupled with the general turnaround in the retail bowling industry.

The article also states that several of these repossessed bowling centers have been resold at very substantial profits. The Company has resold six retail bowling centers since 1965, of which four were sold in 1971. The net effect on 1971 consolidated net earnings of the four center sales was about $200,000.

(over)

A1848
Exhibit P80

PX 81
in evid
5/4/73

cc: Vance Cornish
Bill Francis

Certified No. 196509
Return Receipt Requested

March 19, 1973

Mr. Vincent Sorbello
42 Main Street
Lodi, New Jersey

Reference: Lease dated June 25, 1970 by and between Mr. Sorbello and Brunswick Corporation regarding Lodi Lanes

Dear Mr. Sorbello:

This is to confirm the telephone notification to you by Mr. William Francis of the Brunswick Corporation, that the Brunswick Corporation will cease operating Lodi Lanes as of May 31, 1973.

During the course of the lease, the Brunswick Corporation was forced to make repairs to the premises for your account in the amount of $7,831.13, for which you have already received copies of the bills representing this work.

Accordingly, we will reimburse ourselves by deducting this amount from the April and May rental. Therefore, we will not be paying the April installment to the credit department, and in May we will only be paying $3,152.48.

I am sure a representative of the credit department will be contacting you in the near future to discuss the future handling of your balances with them.

Sincerely,

R. W. Johnson
Property Administrator

LMJ/ar

A1850
Exhibit P81

The Internal Revenue Service claim for income taxes discussed in the article was fully covered in the 1971 Annual Report and had been previously disclosed by a special press release last August, when the probability of a substantial claim became known.

Note 3 in the 1971 Annual Report said: "The Company believes that its treatment of the items in question was proper and in accordance with both the Internal Revenue Code and generally accepted accounting principles. In the opinion of legal counsel the deductions taken by the Company were properly claimed in determining its income tax liability. The Company intends to defend its position vigorously at all appropriate levels of appeal ... Management is of the opinion that its reserves for Federal income taxes are adequate and that any adjustments which may ultimately be determined will not materially affect the financial position or results of operations of the Company."

The special tone of malice in the article appears to have been prompted by annoyance at having been denied a personal interview.

Because of the misstatements, distortions, and innuendos in the article and the effect of the allegations on the investing public, Brunswick plans to call this problem to the attention of the Securities and Exchange Commission.

BEST COPY AVAILABLE

A1849
Exhibit P80

BRUNSWICK
BOWLING ESTABLISHMENT LEASE

Brunswick CORPORATION

THIS LEASE, dated June 25th, 1970 by and between

VINCENT A. SORBELLO and RAPHAEL A. SORBELLO

a _____ corporation, hereinafter called "Landlord", and BRUNSWICK CORPORATION, a Delaware corporation, hereinafter called "Tenant" or "Brunswick";

WITNESSETH:

Section 1. PREMISES. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the following:

(a) The land and parking area located at and commonly known as 58-60 Terhune Avenue, Lodi, New Jersey, together with the easements and hereditaments appertaining thereto, as outlined on the plat plan attached hereto and made a part hereof as Exhibit A;

(b) The improvements on said land consisting principally of a building in which there has been or is being operated a bowling business known as Lodi Lanes (herein called the "Principal Building"); and

(c) All furnishings, fixtures, equipment, signs and other non-bowling items of chattel property of every kind and character located in, on or about the Principal Building and the above described land and parking lot owned by Landlord and used or useful in connection with the operation of said bowling business, including those items listed in Exhibit B attached hereto and made a part hereof; (herein called "Equipment")

All of said real and chattel property taken together is sometimes hereinafter referred to as the "Premises").

Section 2. INITIAL TERM. The initial term of this Lease shall be 36 months, beginning on the 1st day of July 1, 1970, and ending on the 31st day of May, 1973

Section 3. OWNERSHIP. Landlord warrants that it owns the Premises in fee simple and has the legal right to enter into this Lease with Tenant. Landlord further warrants that the Premises are free and clear of all tenancies and encumbrances except a real estate mortgage dated _____, 19__, and recorded in the land records of _____ County, _____, Mortgage Book No. _____ Page _____, and Landlord further warrants that the said mortgage is not now in default.

Section 4. RENTAL. Tenant shall pay to Landlord rental at the rate of $5,616.66 per month in advance, on the first day of each month during the term of this Lease. All payments are to be made by Tenant to Landlord at 42 Main Street, Lodi, New Jersey, or at such other place as Landlord may from time to time designate in writing. At the option of Tenant, mortgage payments payable by Landlord pursuant to the terms of any mortgage on the Premises, may be made by the Tenant and the amounts so paid may then be deducted from rental payments due under this Lease. Landlord will exert its best efforts to obtain from the mortgagee of said mortgage an agreement which will permit Tenant to make said mortgage payments with or without there being any delinquency on the mortgage.

A1851
Exhibit P81

41

(a) Tenant's options

(1) Tenant shall have the option to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the term, to extend the initial term of this Lease for an additional term of seven (7) years commencing upon the expiration of the initial term, at the same rental rate as provided herein for the initial term.

(2) In addition to the option contained in (1) above, Tenant also shall have the option, to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Lease for an additional term of five years, commencing upon the expiration of the initial term and any extension thereof, at the same rental rate as provided herein for the initial term.

(3) In addition to the options contained in (1) and (2) above, Tenant also shall have the option, to be exercised by giving Landlord written notice at least 60 days prior to the expiration of the initial term or any extension thereof, to extend the term of the Lease for an additional term of five years, commencing upon the expiration of the initial term and any extension thereof, at the same rental rate as provided herein for the initial term. (See Addendum)

Section 6. CARE AND MAINTENANCE OF PREMISES. Tenant shall make all repairs to the interior non-structural portions of the Premises, including plate glass, which are necessary to keep the Premises in good order and repair except for ordinary wear and tear and except for any repairs or replacements made necessary as a result of damage caused by any of the perils covered by the standard fire, extended coverage, vandalism and malicious mischief policies of insurance required to be carried hereunder; however, in no event shall Tenant be required to improve the condition of the Premises over that existing on the date of this Lease. Landlord shall promptly make all other repairs and replacements necessary to maintain the building in compliance with all laws and governmental regulations and to protect and maintain the Premises, including, but not limited to exterior walls, roofs, and the heating, air conditioning, cooling and ventilation systems in the building in good order and repair. Tenant may, but need not, make emergency repairs and replacements which are Landlord's obligation. Landlord shall immediately reimburse Tenant for the cost of such repairs and replacements or Tenant may deduct the cost from the rent payable under this Lease. Landlord warrants that on the date of this Lease the building and its mechanical equipment are in good condition and that Landlord knows of no substantial defect therein. Tenant shall have the right to make such interior and exterior alterations as Tenant may determine to be an enhancement of the premises. (See Addendum)

Section 7. TRADE FIXTURES. Tenant shall have the right to remove its trade fixtures and improvements, bowling equipment and other chattels. Following the termination of the initial term and any extension thereof, Tenant shall be permitted to retain possession of the Premises for such period of time, not to exceed 30 days, as may reasonably be required to remove its said property from the Premises.

Section 8. LANDLORD'S ACCESS TO PREMISES. Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the same, or for the purpose of making repairs or alterations to the Premises or any adjacent properties or for any other purpose or purposes contemplated under this Lease. In exercising such rights the Landlord shall not unreasonably interfere with Tenant's business.

Section 9. UTILITIES. Landlord agrees to furnish the existing heating, air conditioning, cooling and ventilation systems which will adequately maintain temperature, humidity and ventilation which will meet applicable codes for the conditions for the use and occupancy of the Premises as equipped. Landlord agrees to provide for Tenant at the Premises an adequate supply of water, electricity and gas and an adequate sewerage system and Tenant shall pay promptly all charges for the use of such facilities. (See Addendum Section 6)

Section 10. INSURANCE. Tenant shall carry and pay for standard fire and extended coverage and vandalism and malicious mischief insurance, which names Landlord as an additional insured, in an amount equal to the actual cash value of the bowling alley floors (or beds), pinsetters, and other bowling bowling equipment and other chattels owned or installed by Tenant. Tenant will furnish evidence of such insurance to Landlord. Landlord, which landlord states to be $400,000.

Tenant shall carry and pay for Comprehensive Public Liability insurance, which names Landlord as an additional insured, on the Premises (and elevator insurance if there are elevators on the Premises) during the Tenant's occupancy thereof, with Bodily Injury limits of $100,000. per person, $300,000. per accident and a Property Damage limit of $50,000. per occurrence. Tenant will furnish evidence of such insurance to Landlord.

Tenant Landlord shall carry and pay for standard fire, extended coverage, and vandalism and malicious mischief insurance, which names Landlord as an additional insured and which provides for waiver of subrogation rights against Tenant, covering and in an amount equal to the actual cash value of the Premises, improvements and appurtenances. Landlord will furnish to Tenant evidence of such insurance. Landlord states that the actual cash value is $350,000.

A1852
Exhibit P81

During the time that Brunswick Corporation is the Tenant of this Lease, it may satisfy each requirement of insurance hereunder (other than public liability insurance) by providing insurance containing provision for a deductible clause in the amount of up to $25,000.00, and by including the Premises in any appropriate blanket policy which it may carry, which blanket policy need not name Landlord as an additional insured, and with respect to the Brunswick bowling equipment, it may act as a self-insurer.

All insurance policies or contracts provided for above shall contain a requirement that there be ten days' written notice to each insured prior to the cancellation of insurance with respect to that insured.

At least fifteen days prior to the expiration of any insurance which has been provided pursuant to the requirements of this section, the party responsible for carrying the insurance will provide to the other party evidence of renewal of such insurance or the replacement thereof.

Section 11. DAMAGE OR DESTRUCTION. If the Premises are destroyed or damaged by fire or the elements or other casualty and the damage or destruction is such that it cannot be repaired by Landlord within sixty days, or if it is such as to exceed 50% of the value of the Premises, Tenant may cancel this Lease by written notice mailed to Landlord thirty or more days before the effective date of cancellation and at anytime within sixty days after the damage or destruction. If the Premises are totally destroyed, Tenant may cancel this Lease by written notice mailed to Landlord within thirty days of the destruction. If this Lease is not cancelled as provided, Landlord at its expense shall with diligence repair, rebuild or restore the improvements and appurtenances as nearly as possible to the conditions existing just prior to the destruction or damage. Tenant's rental during the period from the date of fire or other casualty to the date of complete restoration shall be abated either in whole or pro rata in part, according to the percentage of interference with the conduct of Tenant's business in the Premises.

Section 12. EMINENT DOMAIN. Landlord shall immediately notify Tenant as to any notice or knowledge of any proposed condemnation or eminent domain activity which may affect the Premises.
If Tenant, upon receipt of such notice or other notice that there shall be taken or condemned by any competent authority:

(a) the whole of the Premises, or

(b) less than the whole of the Premises but the remaining portions of the Premises are not sufficient in Tenant's judgment for the conduct of its normal business operation and Tenant so notifies Landlord within one month after such notice,

then, and in either such event, Tenant may cancel and terminate this Lease as of the time when such taking or condemnation will affect Tenant's business and the parties shall be relieved and discharged of all further liability accruing after the date of such termination except that the rental accruing during the month of such termination shall be apportioned pro rata on a daily basis. Each party shall keep its own award and in the event only one award is given, it shall be apportioned between the parties as their respective interests shall appear.

If there shall be taken or condemned by any competent authority less than the whole of the Premises, and Tenant does not elect to terminate this Lease, then the rental payable under this Lease following such condemnation shall be abated pro rata in part in the same percentage as the value of the portion condemned bears to the value of the entire Premises.

Section 13. DEFAULT. If Tenant shall neglect or fail to make any payments of rent or other payments to be made by it hereunder, and such failure shall continue fifteen days after written notice thereof, or if Tenant shall neglect or fail to perform or observe any of the other covenants and agreements in this Lease contained and on its part to be performed or observed, subject to Section 20 hereof, then Landlord shall have the right to enter upon the Premises or any part thereof and repossess the same as of its former estate and expel Tenant without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be available and upon entry as aforesaid, Landlord shall have the option to terminate this Lease and Landlord shall have the right to pursue such rights and remedies as may be allowed at law or in equity against Tenant.

If, after the commencement of the term of this Lease, Tenant shall be adjudicated a bankrupt or if Tenant shall make an assignment of all or substantially all of its assets for the benefit of creditors or if Tenant shall file in any court, pursuant to any statute, either of the United States or of any state having jurisdiction, a petition in bankruptcy or insolvency or for reorganization or arrangement, or if any such petition shall be filed against Tenant and such proceeding shall not be dismissed within 60 days after such filing, Landlord may cancel and terminate this Lease.

If, after the commencement of the term of this Lease, Landlord shall be adjudicated a bankrupt or if Landlord shall make an assignment of all or substantially all of its assets for the benefit of creditors or if Landlord shall file in any court, pursuant to any statute, either of the United States or of any state having jurisdiction, a petition in bankruptcy or insolvency or for reorganization or arrangement, or if any such petition shall be filed against Landlord and such proceeding shall not be dismissed within 60 days after such filing, or if there shall be filed a mortgage foreclosure or other lien foreclosure proceeding involving the Premises which adversely affects Tenant's business, and which is not dismissed within 45 days after such filing, or, the same having been filed, the Landlord permits a sale to take place thereunder, Tenant may cancel and terminate this Lease.

If Tenant shall have failed to perform an obligation required to be performed hereunder, then, Landlord may, subject to the provisions of Section 20 hereof, perform said obligation and any costs and expenses incurred by Landlord by reason thereof shall be paid to Landlord by Tenant and Landlord may consider same as additional rental.

If Landlord shall have failed to perform any obligation required to be performed hereunder then, Tenant may either cancel and terminate this Lease, subject to the provisions of Section 20 hereof, or Tenant may, but shall not be required, to perform said obligation and Tenant may deduct any costs and expenses incurred by Tenant from any rent or other sums required to be paid by Tenant.

A1853
Exhibit P81

Section 14. WAIVER. One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and a consent or approval to or of any act requiring consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act.

Section 15. NOTICES. Mailing of a written notice or demand by registered or certified mail in a sealed, postpaid envelope addressed to Tenant in care of Manager, Property Administration Department, Bowling Operations at 69 West Washington Street, Chicago, Illinois, 60602, and to Landlord at _____ shall be sufficient notice or demand as of the time of mailing in any case arising under this Agreement.

Section 16. INTERPRETATION. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third parties, as creating the relationship of principal and agent, or of partnership or joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any act of the parties hereto, shall be deemed to create any relationship between the parties other than the relationship of Landlord and Tenant.

Section 17. QUIET ENJOYMENT AND USE OF PREMISES. Tenant upon payment of said rent and performing all the other covenants and conditions aforesaid on Tenant's part to be observed and performed shall and may peaceably and quietly have, hold and enjoy the Premises for the term aforesaid and may occupy the same for all lawful purposes and uses free from any disturbance by the Landlord or any other party. Landlord warrants that the existing uses of the Premises are not prohibited by law or by any agreement, and that Tenant shall be free to operate a bowling establishment, to sell bowling supplies and other recreational goods and to operate a food and alcoholic beverage dispensing business in the Premises. In the event that after the commencement of the term of this lease, the laws or governmental regulations affecting the Premises or the business conducted therein are changed so that the said existing uses are no longer permitted, then Tenant may cancel and terminate this Lease. Tenant may, but need not, use the trade name by which the bowling establishment in the Premises is now known. Landlord warrants the continued availability of the existing means of ingress and egress.

Section 18. ENTIRE CONTRACT. This Lease embodies the entire contract of the parties hereto and shall not be altered, changed or modified in any respect, except in writing by a duly authorized officer or attorney-in-fact of Tenant in Chicago and by Landlord.

Section 19. ASSIGNMENT. Tenant may assign this Lease or may sublet the Premises or any portion thereof and shall give Landlord written notice thereof. Notwithstanding any such assignment, notice of any alleged default by any such assignee shall be given by Landlord to the original Tenant herein in the same manner as provided with respect to the default of Tenant under Sections 13 and 20 of this Lease, and the original Tenant herein shall have the same rights to cure such alleged default as if no assignment had taken place.

Upon any assignment or subletting the Tenant named herein shall remain liable for the payment of the rent and the performance of other terms and conditions herein contained on the part of the Tenant to be performed, provided, however, that if the Tenant sells its bowling equipment and trade fixtures and Tenant's business in the Premises to a bona fide purchaser, either for cash or upon Tenant's standard credit terms, Tenant may assign this Lease to such purchaser and, upon the execution of a written assumption of this Lease by the purchaser for a period of not less than ten years, and the delivery thereof to the Landlord, the named Tenant herein shall be released from all liability of every kind and character under the terms of this Lease accruing subsequent to the date of the delivery of such instrument of assumption to the Landlord. In connection with any such assignment, Landlord agrees to sign such additional documents as Brunswick may reasonably require to provide additional security as against such assignee.

Section 20. NOTICE OF BREACH. Any provision herein to the contrary notwithstanding, no breach under this Lease (other than the failure to pay rent) shall be enforced against the Tenant unless the Tenant shall fail to remedy the breach within thirty days after written notice from the Landlord specifying the breach, or, if the breach for any default other than non-payment of rent cannot be remedied within thirty days, then within a reasonable time thereafter provided Tenant commences to remedy such breach within said thirty day period and prosecutes it to completion with diligence.

No breach under this Lease shall be enforced against the Landlord unless the Landlord shall fail to remedy the breach within thirty days after written notice from the Tenant specifying the breach, or if the breach cannot be remedied within thirty days, then within a reasonable time thereafter, provided Landlord commences to remedy such breach within said thirty-day period and prosecutes it to completion with diligence.

Section 21. MEMORANDUM OF LEASE. The parties hereto, concurrently with the execution of this Lease, have executed a short form of lease suitable for recording which may be recorded by either party.

Section 22. SECTION HEADINGS. The section headings used herein are for convenience and reference only.

BEST COPY AVAILABLE

A1854
Exhibit P81

Section 23. SUCCESSION. All covenants and agreements herein contained shall be binding upon and shall inure to the benefit of successors in interest and signs of the parties hereto.

Section 24. TAXES. Landlord agrees to pay when due real estate taxes, which may be levied against the Premises, and to pay personal property taxes on all personal property on the Premises which is owned by Landlord. Landlord will provide to Tenant evidence of such payment within 30 days after making same.

Section 25. NON-SUBORDINATION. This Lease shall not be subordinate to any mortgage or other lien hereafter to be executed or perfected with respect to the Premises.

Section 26. LANDLORD TO ASSIST WITH LICENSES. Landlord will assist Tenant in every way reasonably possible to enable Tenant to obtain or procure by transfer or otherwise, the licenses necessary to operate the bowling establishment, billiard room, bar and restaurant and other businesses attendant to Tenant's normal operations in the Premises. In the event that, through no fault of Tenant, (a) Tenant is unable to obtain any such license, or (b) having obtained the same it is revoked, then Tenant may cancel and terminate this Lease. To the extent that Tenant obtains the benefit of a license fee pre-paid by Landlord, Tenant will make payment to Landlord therefor on a pro rata basis.

Section 27. CANCELLATION. During the time that Brunswick Corporation is the Tenant of this Lease, it shall have the right at any time to cancel and terminate this Lease upon the payment to Landlord of 50% of the remaining unpaid rentals due during any term or extension upon which Brunswick Corporation is then obligated as Tenant hereunder.

Section 28. SERVICE AGREEMENT (See Addendum)

Section 29. EXISTING OBLIGATIONS OF LANDLORD TO TENANT (See Addendum)

This Lease consists of 4 printed pages (including this page and page 6 and ____ containing acknowledgements) together with Exhibit A and B, and additional paragraphs numbered 1, 4, 5, 6, 28+29 to ____ inclusive, which are attached hereto as additional pages 7 through 13

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Carmella Gallo
As to Vincent ~~Secretary~~ A. Sorbello

VINCENT A. SORBELLO, Landlord

By Raphael A. Sorbello
RAPHAEL A. SORBELLO, Landlord

ATTEST:

Assistant Secretary

BRUNSWICK CORPORATION

By
Vice President—Tenant

ACKNOWLEDGEMENT BY INDIVIDUAL LANDLORD

State of New Jersey County of Bergen, ss.

On this 25th day of June, 1970, before me _____, a Notary Public in and for the State of New Jersey County of Bergen, personally appeared VINCENT A. SORBELLO to me known to be the identical individual/s described in and who executed the within instrument, to whom I first made known the contents thereof and acknowledged that he/she/they signed, sealed and delivered the same as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate above written.

Carmella Gallo
Notary Public Carmella Gallo

My Commission Expires January 19, 1976

1600.20 R 3-67 5 of 6

A1855
Exhibit P81

ACKNOWLEDGEMENT BY PARTNERSHIP LANDLORD

State of _____ County of _____, ss.

On this ____ day of _____, 19____, before me _____, a Notary Public in and for the State of _____ County of _____, personally appeared _____ known to me to be (one of) the partners in the partnership of _____ and the partners, or one of the partners, who subscribed said partnership name to the within instrument, and acknowledged to me that he/they executed the same in said partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate above written.

_____
Notary Public

My Commission Expires _____

ACKNOWLEDGEMENT BY CORPORATION LANDLORD

State of _____ County of _____, ss.

On this ____ day of _____, 19____, before me _____, a Notary Public in and for the State of _____ County of _____, personally appeared _____ to me personally known to be the identical person who signed the attached instrument and known to me to be the _____ of the corporation which executed the same, who being by me duly sworn, did say that he is _____ of _____, that he knows the seal of said corporation, that the seal affixed to said instrument is the seal of said corporation and that the said instrument was signed, sealed and delivered in behalf of said corporation by authority of its Board of Directors, and said _____ acknowledged the execution of said instrument to be his free, true and lawful act and deed and the free, true and lawful act and deed of said corporation by him in his said capacity and by it voluntarily executed for the uses, purposes and consideration therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate first above written.

_____
Notary Public

My Commission Expires _____

ACKNOWLEDGEMENT BY TENANT

State of Illinois
County of Cook } SS

I HEREBY CERTIFY that on this 29th day of June, 1970, before me, the subscriber, a Notary Public of the State of Illinois, in and for the County of Cook aforesaid, personally appeared W. Rude, Vice President of BRUNSWICK CORPORATION, Tenant herein, and acknowledged the foregoing Lease to be the free and voluntary act of said corporation.

WITNESS my hand and Notarial Seal.

My Commission Expires 2-27-74

Teresa Reed
Notary Public

1600.20 R 3-67 6 of 6

A1856
Exhibit P81

ADDENDUM TO

BOWLING ESTABLISHMENT LEASE

THIS ADDENDUM is to a certain Bowling Establishment Lease dated June , 1970, by and between VINCENT A. SORBELLO and RAPHAEL A. SORBELLO, hereinafter called "Landlord" and BRUNSWICK CORPORATION, hereinafter called "Tenant". Said Lease is hereby amended as follows:

Section 1. PREMISES. (Continued)

The Premises also include the parking lot leased by the Landlord adjacent and on the east of the principal building. Section 1 is further amended by excluding from the Premises the area devoted to the operation of the cocktail lounge and the equipment and personal property devoted to such cocktail lounge business, the exclusive control of which is reserved to the Landlord. In addition, Landlord further reserves (a) the right to use portions of the bowling center concourse and other areas of principal building for the service of alcoholic beverages and other purposes necessary for the operation of such cocktail lounge business in a manner similar to how it has been operated heretofore. The said exclusion and reservation shall cease and this Lease accordingly be amended to include the premises of the said cocktail lounge upon the exercise by Tenant of its option to purchase the said cocktail lounge business.

A1857
Exhibit P81

Section 4.

If Tenant shall have purchased from the Landlord the cocktail lounge business now held by Landlord at the premises during the term of this Lease or any renewals thereof and the premises defined by this Lease shall have been amended to include the portion of the building occupied by the cocktail lounge, then from and after the date of such purchase and the said amendment of this Lease, the rent shall be at the rate of $91,000 per year.

Section 5. TENANT'S AND LANDLORD'S OPTIONS.

In the event that Brunswick does not give notice of its exercise of any option to renew during the 90-day period prior to the end of the current term, Landlord shall have the right to have its personnel in the Premises to observe the operations of Brunswick so as to become familiar therewith prior to the end of such term.

(4) In the event that Landlord shall exercise his option as provided in Section 5(b) (1), then Tenant shall have the right, as provided in Section 5(b) (2), to pay Landlord for any deficiency.

(b) Landlord's Option

(1) The parties recognize that the profitability of the cocktail lounge operations on the premises is fully dependent on the successful management of the bowling operation and that improper

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Exhibit P81

management of the bowling operation will have an adverse effect on the profits realized by Landlord from the cocktail lounge operations on the premises. The parties agree that proper management of the bowling operations should result in an operating profit (as calculated pursuant to the accounting system provided by Tenant) in the cocktail lounge operations of $23,600 per year. If during the twelve month period following the signing of this Lease or during any succeeding twelve-month period, the said profits from the cocktail lounge are less than $23,600, the amount which the parties agree would result from the proper management of the bowling operation, then Landlord at his option may cancel this Lease by written notice within 60 days from the expiration of the twelve-month period yielding deficient operating profits. Said notice shall state the amount of the deficiency in said profits during the twelve-month period.

(2) In the event the Landlord shall exercise his option under Section 5(b) (1), then Tenant at its option shall have the right to pay Landlord an amount equal to the deficiency within 30 days from the date of the notice of cancellation. If the Tenant exercises this option, then the notice of cancellation shall be ineffective and the terms of this Lease shall continue to apply.

Section 6. CARE AND MAINTENANCE OF PREMISES. (Continued)

As a condition of Tenant becoming obligated on this Lease, Landlord agrees to make the following repairs to the Premises promptly after the commencement of the term hereof:

Air Conditioning System #1

1. Points in the electrical contactors are badly pitted and should be replaced.
2. Blower wheels need thorough cleaning.
3. Blower coupler needs replacement.
4. Condensate pan needs cleaning and painting.

Air Conditioning System #2

1. Points in the electrical contactors are badly pitted and should be replaced.
2. Blower wheels need thorough cleaning.
3. Blower coupler needs replacement.
4. Condensate pan needs cleaning and painting.
5. Blower chamber serving both systems needs a thorough cleaning and all covers lying around replaced.

Mens Restroom

1. Both hand dryers are missing and need replacement.

Building Exterior

1. Majority of the downspouts are broken and missing and need thorough repair.
2. The entire exterior of the building needs painting.
3. The majority of gutters around the building need repair or replacement.
4. Due to lack of a downspout, a corner of the building at the rear entrance is eroded and needs replastering.
5. Exterior of the building immediately next to the rear entrance needs finishing exterior-wise due to a storeroom addition.
6. All aluminum doors to the center need repair and in approximately four instances, doors need replacement.
7. Roof leaks.

Tenant will obtain and provide to Landlord an estimate as to the cost of each item, and at Landlord's option, Landlord may direct Tenant to make the repairs at said cost, but all at Landlord's expense. After the completion of said repairs, Tenant will be responsible for the care and maintenance of the Premises as provided in Section 6.

Section 28. SERVICE AGREEMENT.

As part of the consideration for the execution of this Lease, the Landlord has required that Tenant execute, concurrently herewith, a Service Agreement by which Tenant agrees to perform certain services to Landlord which will be essential to the successful operation of the cocktail lounge. The parties hereto recognize the importance of such Service Agreement and also recognize the importance of the continued operation of the said cocktail lounge to the success of the bowling center business. Landlord agrees to make their best efforts to keep the license for such lounge in good standing and to make no effort to transfer the said license from the premises.

Section 29. EXISTING OBLIGATIONS OF LANDLORD TO TENANT.

Nothing in this Lease shall diminish or modify the obligations of Landlord to Brunswick Corporation under certain contracts for the purchase from Brunswick Corporation of bowling equipment now installed in the Premises. Landlord agrees that in the event that Landlord fails to make any payment required under said contract on the date required, such failure shall be a default under this Lease, and in addition to any other remedies which may be available to Brunswick Corporation arising from said default, Brunswick Corporation may deduct any such delinquent payment and any late charges and interest thereon from rental payments which would otherwise be due under this Lease.

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Exhibit P81

A1864
Exhibit P87

Recreation

Brunswick Comes Back With Non-Bowling Operations

THE TOP OFFICER of Brunswick Corp, John Leonard Hanigan, says he never makes earnings forecasts. Naturally reticent, the 58-year-old executive has had plenty of experience dodging questions—he spent 26 years at Corning Glass where management is known for its restraint. Hanigan was executive vp of the Dow-Corning unit when he left in 1963 to take over the presidency of then-beleaguered Brunswick. At the time Benjamin Edward (Ted) Bensinger moved up to chairman (a post the 64-year-old Yale man still holds) and in 1966 he gave Hanigan the chief executive title as well.

Forecasts aside, Jack Hanigan these days is making a determined effort to talk about Brunswick. On a brief trip to New York from Chicago headquarters recently, he stressed: "This is a different company and a lot of people don't realize it." Last year Brunswick derived most of its profits from two non-bowling operations: 85%-owned Sherwood Medical Industries and the 1961-acquired Mercury marine motor division. With sales up 7% to $450,000,000, Brunswick earnings in 1969 totaled $14,470,000 or 78¢ a share vs 68¢.

This represents the fourth straight recovery year for Brunswick. Peak profits came in 1961 when the company netted $44,980,000 ($2.58). Bowling revenues then accounted for 70% of business compared to under 15% last year. When its automatic pinsetter business collapsed, profits crumbled. In 1962 earnings fell 46% and the decline accelerated until 1965 when the company recorded a $76,700,000 deficit. That year Brunswick wrote off most of its inventory of repossessed pinsetters and provided for future losses on receivables.

Quiet-spoken Jack Hanigan, who wears metal-framed eyeglasses, says: "It's a comfort these days to have a solid balance sheet. We have really cleaned it up. Our accounts receivable are in strong hands. For the good bowling proprietor, bowling is a helluva good business."

Brunswick still sells pinsetters, mostly for replacement, and remains the leading maker of bowling supplies. Brunswick has been No 1 in bowling for most of its 125-year life and it was in large part to protect this dominance of the equipment field—from alleys to pins to balls—which led it to develop its pinsetter, following AMF's pioneering Pinspotter (IR, May 6).

Potential Contributor

Interestingly enough, one cause of its woes has turned into a potentially sound profits contributor. The company repossessed a number of bankrupt bowling centers, mostly in 1965. Under Brunswick tutelage, the 175 centers last year produced a net profit of over $300,000 on revenues estimated around $37,000,000. As depreciation costs decline, the president believes the operation will earn at least $3,000,000 pre-tax annually by 1973.

Brunswick has acquired its way into several other fields. In 1959 it bought AS Aloe, a distributor of medical supplies and scientific equipment. Brunswick subsequently purchased several small medical equipment manufacturers. In 1968 the company consolidated its medical activities, except for the Aloe distribution operation, into Sherwood Medical Industries and sold 750,000 shares to the public at 29 (Sherwood now trades on the Amex around 41).

Sherwood Disposables

Sherwood, which is consolidated in Brunswick accounts, netted $6,450,000 in 1969 on sales of $48,700,000. Most of its business is in disposable medical products like needles, syringes, tubes, procedure kits. Early this year Brunswick sold Aloe to Sherwood for $15,700,000. Aloe has sales in the neighborhood of $60,000,000. Sherwood is now the No 2 hospital supplies distributor after American Hospital Supply.

Brunswick's second big profits contributor, the Mercury division, stands No 2 in the industry after Outboard Marine which has both Johnson and Evinrude. President Hanigan notes some softness in stern drives (inboard-outboard motors which range up to 390 hp) and inboard engines but adds "we've been able to shift that into outboard motors," Mercury's main business. Concorde fiberglass yachts have felt the recession however. The division (once known as Owens Yacht) brings in about 3% of Brunswick sales but sails in a red sea.

The consumer products division includes MacGregor sporting goods,

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A1865
Exhibit P87

Zebco fishing tackle, Australian ski supplies, Brunswick billiard tables. "In toto," the president explains, "the division is profitable. But sporting goods is simply a matter of marketing—there's no way to have a technical advantage. If you made a club that would drive a ball 450 yards, it would be declared illegal." Jack Hanigan is a golfer, "a terrible one," and enjoys bone fishing.

The rest of Brunswick is comprised of the technical division, which does military work, mainly aircraft radomes (radar housing), as well as general R&D for the company, and the international division (12% of sales).

Again led by Sherwood and Mercury, Brunswick profits in the March quarter improved to 18¢ a share from 14¢. Jack Hanigan says the company has been affected by the Teamster walkouts in the second quarter but only so far as suppliers are concerned. Brunswick has its own fleet of 100 trucks. Wall Streeters expect full-year earnings to rise at least 15% to 90-to-95¢ a share.

Jack Hanigan has a five-year plan which "shows steady earnings improvement." However as far as the company is presently constituted, he does not see Brunswick returning to its 1961 profit level in the period: "That would mean an after-tax return of 25% on current stockholders equity. It's not possible."

Nor have prices of the 18,700,000 Big Board-listed "BC" shares come close to the glamorous bowling peak levels. A steep climb from 8 in 1959 to 75 in 1961 was followed by a collapse to 13 the next year and 6 by 1966. BC recovered to 25 last Summer but, despite the earnings advance, the stock dropped back to a 32-month low of 9⅞ in May and as of last week traded around 13.

Brunswick has poured big sums into three new products, two of which should start to return some dividends this year. It has spent $10,000,000 on Brunsmet, a metal fiber for use in carpets, acoustical material, hospital uniforms. The fiber neutralizes electrical charges and thus is shockfree. Other advantages in carpets: "It keeps dirt from clinging and is longer wearing."

Brunswick has invested $5,000,000 in a computerized bowling scorer. The $13,000 automatic device also "inserts handicaps, gives a printout of the score and eliminates free frames. It takes care of four lanes at once." Brunswick hopes to install 500 scorers this year, "if we can make that many," vs 50 in 1969. Most are being sold outright.

The third project, All-Seasons Golf, is more of a financial gamble. So far Brunswick has spent $5,000,000 on this computerized indoor golf game. The player drives the ball down what appears to be a fairway but it is actually a panoramic picture projected on ribbons of nylon. A light beam acts as a sensing device, computing the velocity and trajectory of the ball. The picture changes for the various fairway shots. If the ball lands in the rough, the floor turns over and simulates that condition. There are also water holes and sand traps. After the player gets on the apron or green itself, he goes to the next room to chip or putt. When finished he presses a button, the green undulates and stops at random. Then he returns to tee off in the first room. The game pictures nine fairways.

Currently Brunswick is market testing "the commercial feasibility of the game. We have not made any decision on producing it." Brunswick has built nine games and operates them on Woodhaven Boulevard in Queens, in Chicago suburb Lombard, Buffalo and by Fall in Tokyo. The US test lay-outs use portions of Brunswick-owned bowling centers; in Queens three golf games take up the space of seven bowling alleys. The game is usually rented by a foursome —$20 an hour for prime time at the Queens outlet.

Jack Hanigan thinks Japan might become the big market. "There is no land there and golf is a status symbol. They even have five-story driving ranges." He adds all research expenditures have been expensed so there will be no big writeoffs if any of the new projects flop.

President Hanigan has set up certain standards for the company's various operations. To this end, Brunswick in December sold its $23,000,000-sales School Equipment division for $9,800,000. To Jack Hanigan, a Brunswick business "must have a technical advantage or be a major factor in the market or both."

From tee . . .

. . . To green, all indoors

BRUNSWICK CORPORATION --

SUMMARY OF PINSETTER SALES (NEW) AND REPOSSESSIONS OF PINSETTERS -- IN UNITS IN THE U.S.

Year	Sales	Repossessions
1956	1,890	no record
1957	7,041	no record
1958	10,528	no record
1959	12,876	no record
1960	15,232	no record
1961	16,288	300
1962	7,518	1,462
1963	2,978	3,354
1964	1,441	4,592
1965	659	5,996
1966	244	3,658
1967	295	1,688
1968	112	716
1969	118	783
1970	173	290
1971	72	116
1972	1,048	50

A1866
Exhibit D1

A1867
Exhibit D1A

INTERSTATE LANES
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 1 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
****GROSS REVENUE****													
TEN PIN REVENUE													
TEN PIN AD LGE REV	31010100	22391	35.1	19631	33.5	20554	33.2	181186	35.5	164753	33.0	151129	31.3
TEN PIN AD OPEN REV	31010200	8569	13.4	9112	15.5	8797	14.2	87752	17.2	83763	16.7	88141	18.2
ADULT SPECIAL	31010201	45	1	165	2	1		749	1	1716	3	285	1
ADULT TOURNAMENT	31010202							304	1	420		33	
TEN PIN JR LGE REVEN	31010300	2302	3.6	1350	2.3	2390	3.9	16973	3.3	9325	1.8	15580	3.2
TEN PIN JR OPEN REV	31010400	3063	4.8	3025	5.1	2973	4.8	23853	4.7	27225	5.4	27487	5.7
JUNIOR SPECIAL	31010401	296	5	100	1	327	5	3223	6	1740	3	1952	4
JUNIOR TOURNAMENT	31010402	153	2	750	1.2	128	2	324	1	7000	1.4	262	1
SCHOOLS	31010403			150	2			1080	2	300		190	
TOTAL TEN PIN REVENUE		36819	57.8	34283	58.6	35170	56.8	315453	61.9	296242	59.4	285052	59.0
TOTAL BOWLING REVENUE		36819	57.8	34283	58.6	35170	56.8	315453	61.9	296242	59.4	285052	59.0
SHOE RENTAL													
SHOE RENTAL REV	32010100	1760	2.8	1625	2.7	1716	2.8	15208	3.0	15032	3.0	15316	3.2
LOCKER RENTAL REV	32010200	69	1			49	1	482	1	460		403	1
TOTAL SHOE RENTAL		1829	2.9	1625	2.8	1765	2.8	15690	3.1	15492	3.1	15719	3.3
PRO SHOP													
PRO SHOP REVENUE	32020100	4464	7.0	1656	2.8	3598	5.8	13626	2.7	14768	2.9	15161	3.1
SHIRT SALES	32020300	159-	3	250	4	205	3	1178	2	2075	4	861	2
TROPHY SALES	32020400	3						2631	5	650	1	1461	3
BALL PLUG & REPAIR	32020600	63	1			48	1	609	1			168	
TOTAL PRO SHOP		4371	6.9	1906	3.3	3851	6.2	18044	3.5	17493	3.5	17651	3.7
BILLIARDS													
BILLIARDS REVENUE	32030100	1119	1.8	1217	2.0	1541	2.5	9358	1.8	11193	2.2	11663	2.4
TOTAL BILLIARDS		1119	1.8	1217	2.1	1541	2.5	9358	1.8	11193	2.2	11663	2.4
VENDING MACHINES													
	33010200											3	
ICE CREAM REVENUE	33010400	76	1					76					
SNACK VENDING MACHIN	33010600	302	5	110	1			2860	6	924	1	224	

INTERSTATE LANES 102
RAMSEY .NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 2 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
BALL CLEANING MACHIN	33010900	18		12		26		48		109		114	
GAME & MISC MACHIN	33011000	528	8					528	1				
LUSTRE KING MACHINE	33011100	144	2	105	1	3		887	2	920	1	797	2
BOWLERS AID REVENUE	33011200	122	2	55		53	1	770	2	543	1	632	1
TOTAL VENDING MACHINES		1190	1.9	282	5	82	1	5169	1.0	2493	5	1770	4
OTHER RECREATIONAL													
BIRTHDAY PARTY REV	33020500	25						25				173	
PROMOTIONAL BANQUE	33020600							6					
MISCELLANEOUS INCOME	33029900	119	2	150	2	594	1.0	816	2	1800	3	1966	4
TOTAL OTHER RECREATIONAL		144	2	150	3	594	1.0	847	2	1800	4	2139	4
BAR REVENUE													
LIQUOR REVENUE	34010100	6007	9.4	6100	10.4	6254	10.1	42219	8.3	48950	9.8	44693	9.2
DRAFT BEER REVENUE	34010200	2708	4.2	2967	5.0	3052	4.9	22903	4.5	24643	4.9	24537	5.1
BOTTLE BEER REVENUE	34010300	2539	4.0	2300	3.9	2394	3.9	21123	4.1	18400	3.6	19533	4.0
TOTAL BAR REVENUE		11254	17.7	11367	19.4	11700	18.9	86245	16.9	91993	18.4	88763	18.4
FOOD REVENUE													
FOOD REVENUE	34020100	6151	9.7	6980	11.9	6096	9.8	51021	10.0	56000	11.2	54553	11.3
TOTAL FOOD REVENUE		6151	9.7	6980	11.9	6096	9.8	51021	10.0	56000	11.2	54553	11.3
TOTAL FOOD AND BEV. REVENUE		17405	27.3	18347	31.4	17796	28.7	137266	26.9	147993	29.7	143316	29.6
RENT INCOME													
RENT INCOME-BUILDI	35010600							20					
TOTAL RENT INCOME								20					
COMMISSIONS REVENUE													
COMM. VENDING MACHIN	35020100	858	1.3	625	1.0	1120	1.8	7687	1.5	5700	1.1	5911	1.2
COMM. TELEPHONE	35020200			30		27		316	1	305		325	1
TOTAL COMMISSIONS REVENUE		858	1.3	655	1.1	1147	1.9	8003	1.6	6005	1.2	6236	1.3
TOTAL TOTAL GROSS REVENUE		63735	100.0	58465	100.0	61946	100.0	509850	100.0	498711	100.0	483546	100.0

A1869
Exhibit D1A

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS — STATEMENT PAGE NO. 3 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
****COST OF GOODS****													
PRO SHOP COST													
PRO SHOP COSTS	42020100	2153	48.2	994	60.0	2496	69.3	8363	61.3	8863	60.0	9097	60.0
SHIRT COSTS	42020300	608	381.3	188	75.2	184	89.9	1240	105.3	1557	75.0	571	66.2
TROPHY COSTS	42020400	45	812.0			74		1449	55.0	39[illegible]	60.0	1493	102.2
TOTAL PRO SHOP COST		2806	64.1	1182	62.0	2754	71.5	11052	61.2	108[illegible]	61.7	11161	63.2
VENDING COST													
SNACK VENDING MACH CST	43010600	101	33.4	61	55.4			1109	38.7	525	54.6	154	68.6
BOWLERS AID COSTS	43011200	444	364.4	36	65.4	199	3	777	100.9	354	65.5	702	1
TOTAL VENDING COST		545	45.7	97	34.3	199	242.6	1886	36.4	859	34.4	856	48.3
BAR COST													
LIQUOR COSTS	44010100	2238	37.2	1342	22.0	2695	43.1	11178	26.4	107[illegible]	22.0	11119	24.8
DRAFT BEER COSTS	44010200	1163	42.9	920	31.0	1260	41.2	5929	25.8	763[illegible]	30.9	6156	25.0
BOTTLE BEER COSTS	44010300	1244	48.9	805	35.0	1014	42.3	6040	28.5	644[illegible]	35.0	5828	29.8
TOTAL BAR COST		4645	41.2	3067	26.9	4969	42.4	23147	26.8	2485[illegible]	27.0	23103	26.0
FOOD COST													
FOOD COSTS	44020100	3851	62.6	2443	35.0	3347	54.8	19038	37.3	196[illegible]	35.0	19139	35.0
TOTAL FOOD COST		3851	62.6	2443	35.0	3347	54.9	19038	37.3	196[illegible]	35.0	19139	35.0
TOTAL FOOD AND BEV. COST		8496	14.6	5510	9.7	8316	14.3	42185	8.6	44452	9.2	42242	9.1
TOTAL TOTAL COST OF GOODS		11847	51.5	6789	33.0	11269	51.8	55123	34.3	5612[illegible]	33.4	54259	33.3
FIXED & CNTRL EXP.													
RENT EXPENSE													
RENT BUILDING	66010100 66010200	5195	8.2	4853	8.3	4850	7.8	52848	10.4	50468	10.1	50457 90	10.4
RENT-BAR CORPS	66010400							1500-	3				
TOTAL RENT EXPENSE		5195	8.2	4853	8.3	4850	7.8	51348	10.1	5046[illegible]	10.1	50547	10.5
DEPRECIATION EXPENSE													

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INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 4 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
DEPR-LEASEHOLD IMPRO	66030100	370	6	330	5	350	6	2243	4	2244	4	2380	5
DEPR-AUTO PINSETTERS	66030300	965	1.5	975	1.6	1332	2.2	6562	1.3	6630	1.3	2509	5
DEPR-BOWL EQUIPMENT	66030500	320	5	321	5	312	5	2176	4	2184	4	2344	5
DEPR-CARPETS	66030600	140	2	141	2	180	3	952	2	954	1	1224	3
DEPR-DRAPES	66030700					4		1005	2			65	
DEPR-SIGNS	66030800	15				10		102				68	
DEPR-OFFICE EQUIPMEN	66030900	100	2	95	1	105	2	680	1	656	1	714	1
DEPR-MISC. EQUIPMENT	66031000	195	3	146	2	216	3	1326	3	1023	2	1145	2
DEPR VENDING	66031200	30		35		45	1	312	1	238		306	1
DEPR R&B EQUIP	66033000	25		32		43	1	170		220		155	
TOTAL DEPRECIATION EXPENSE		2160	3.4	2075	3.5	2597	4.2	15528	3.0	14149	2.8	10910	2.3
LICENSES & TAX EXPENSE								687	1	1000	2	941	2
LISCENSES BOWLING	66040100	60	1	96	1	12		599	1	624	1	670	1
LICENSES-REST.AND BA	66040200	65	1	60	1	81	1	30		30			
LICENSES-BILLIARDS	66040300							15				10	
STATE FRANCHISE TA	66042000												
PROP. TAX-PERSONAL	66042100	169-	3	210	3	39	1	1964	4	2184	4	1919	4
TOTAL LICENSES & TAX EXPENSE		44-	1	366	6	132	2	3295	6	3838	8	3540	7
INSURANCE								1600	3	1600	3	888	2
FIRE INSURANCE	66050100	150	2	154	2	80	1	1600	3	1600	3	888	2
TOTAL INSURANCE		150	2	154	3	80	1						
TOTAL FIXED EXPENSE		7461	11.7	7448	12.7	7659	12.4	71771	14.1	70055	14.0	65885	13.6
PAYROLL EXPENSE								22025	5.9	24700	7.0	22889	6.7
PAYROLL-ADMIN.	67010101	2453	5.2	2375	5.9	2166	4.9	19765	5.3	17537	5.0	16207	4.7
PAYROLL-OPERATIONAL	67010102	1944	4.1	1981	4.9	1983	4.4	15558	4.1	14560	4.1	11231	3.3
PAYROLL-MAINTENANCE	67010103	1019	2.1	1400	3.4	1347	3.0	19085	5.1	8736	2.4	10249	3.0
PAYROLL-PORTERS	67010104	2391	5.1	920	2.2	1392	3.1	11152	2.9	11960	3.4	14220	4.1
PAYROLL-PINCHASERS	67010105	1435	3.0	1150	2.8	1017	2.3	828	1				
TOTAL PAYROLL ADJ H/O	ON	828	1.7										
TOTAL		10070	21.7	7826	19.5	7905	17.9	88413	23.7	77493	22.0	74796	21.9
PAYROLL BARTENDER	67010201	1483	13.1	1250	10.9	1329	11.3	12348	14.3	11010	11.9	11247	12.6

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

A1871
Exhibit D1A

PROFIT OR LOSS - STATEMENT PAGE NO. 5 DECEMBER 1972 PROGRAM LPC80-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
PAYROLL WAITRESS	67010202	465	4.1	520	4.5	387	3.3	3059	3.5	3992	4.3	2565	2.8
TOTAL		1948	17.3	1770	15.5	1716	14.6	15407	17.8	15002	16.3	13812	15.5
PAYROLL COOKS	67010302			544	7.7	282	4.6	2151	4.2	5295	9.4	2305	4.2
PAYROLL WAITRESS	67010303	1164	18.9	1125	16.1	1548	25.3	9161	17.9	10205	18.2	12324	22.5
TOTAL		1164	18.9	1669	23.9	1830	30.0	11312	22.1	15500	27.6	14629	26.8
TOTAL PAYROLL EXPENSE		13182	20.7	11265	19.3	11451	18.5	115132	22.6	107995	21.7	103237	21.4
PAYROLL TAX EXPENSE													
PAYROLL TAX-BOWLING	67020100	574	9	704	1.2	504	8	7037	1.4	6970	1.3	5762	1.2
PAYROLL TAX-BAR	67020200	161	3	159	2	121	2	1136	2	1351	2	1087	2
PAYROLL TAX-RESTAURANT	67020300	96	2	150	2	108	2	969	2	1394	2	1007	2
TOTAL PAYROLL TAX EXPENSE		831	1.3	1013	1.7	733	1.2	9142	1.8	9715	1.9	7856	1.6
EMPLOYEE BENEFITS EXP	67030100											18	
UNION PENSION/WELFAR	67030200	612	9	265	4	352	6	3659	8	2756	5	2326	5
EMPLOYEE MEALS	67030500	109	2	45		71	1	681	1	468		474	1
OTHER BENEFITS	67039900	95	1			102	2	205				102	
TOTAL EMPLOYEE BENEFITS EXP		816	1.3	310	5	525	8	4545	9	3224	6	2920	6
INSURANCE - OTHER													
WORKMENS COMP. INS.	67040100	160	2	154	2	160	2	1689	4	1600	3	1664	4
LIABILITY INSURANCE	67040200	115	2	116	1	115	2	1196	2	1200	2	1196	2
OTHER INSURANCE	67049900	90	1	73	1	90	1	970	2	756	1	946	2
TOTAL INSURANCE - OTHER		365	6	343	6	365	6	3855	8	3556	7	3806	8
TRAVEL & MEETINGS													
TRAVEL & ENTERTAIN	67050100			68	1	224	4	139		704	1	234	
REGIONAL MGR MEETI	67050300							228				231	
EMPLOYEE TRAINING	67050500					39	1	258	1			216	
TOTAL TRAVEL & MEETINGS				68	1	263	4	625	1	704	1	681	1
REPAIRS & MAINTENANCE													

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 6 DECEMBER 1972 PROGRAM LP080-C2

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
JANITORIAL CONTRAC	67060101							123				18	
	67060103											87	
GARBAGE COLLECTION	67060105	240	4	116	1	160	3	960	2	1200	2	950	2
SIGN CONTRACTS	67060106							79					
PEST CONTROL	67060107	36	1	15		18		107		156		104	
FIRE EXTINGUISHER	67060108					14		151				98	
TOTAL		276	4	131	2	192	3	1420	3	1356	3	1257	3
SMALL TOOLS	67060200	84	1	23		28		661	1	236		370	1
PINSETTER PARTS/LAB	67060300	1335	2.1	462	7	1311	2.1	9234	1.8	4800	9	5071	1.0
PINSETTER MAINT. SUP	67060400			34		11		198		352		350	1
LANE PARTS REPLACEMN	67060500	17		44		16		330	1	480		554	1
LANE MAINT. SUPPLIES	67060600	850	1.3	69	1	61	1	1207	2	716	1	621	1
RESURFACING	67060700	130	2	175	2	145	2	1972	3	1640	3	1908	3
JANITORIAL EQUIPT/R&	67060800			53				92		548	1	86	
PIN MAINTENANCE	67060900	221	3	29				254	1	300		283	1
BILLIARD EQUIPT R&M	67061000	236	4	44				345	1	480		31	
REFRIG. EQUIPT R&M	67061100	553	9	48				792	2	496		123	
REST. EQUIPT. R & M	67061200	12		24		19		270		248		470	1
BAR EQUIPT. R & M	67061300	244	4	24				284	1	248		162	
HEAT-A/C R & M	67061500	139	2	87	1	230	4	4030	8	900	1	782	2
BUILDING R & M	67061600	549	9	83	1	144	2	3241	6	860	1	1150	2
EXTERIOR LAND R&M	67061700							236		64		41	
FRAMEMASTER R & M	67061800			6								31-	
BUS REPAIRS & MAINT.	67061900			39		149	2	736	1	404		657	1
VENDING MACHINE R &	67062000	1		6				195		64		33	
SIGN REPAIRS & MAINT	67062200			19						196		51	
OFFICE EQUIPT. R & M	67062500			6				86		64		40	
OTHER REPAIRS/MAINT.	67069900			12				86		120		125	
TOTAL REPAIRS & MAINTENANCE		4647	7.3	1422	2.4	2306	3.7	25283	5.0	14572	2.9	13736	2.8
OPERATING SUPPLIES													
BOWLING SUPPLIES	67070100	1013	1.6	346	5	161	3	3115	6	3600	7	1892.	4
BILLIARD SUPPLIES	67070200			23		51	1	185		236		170	
BUS SUPPLIES	67070300	9		87	1	49	1	274	1	900	1	290	1
RESTAURANT SUPPLIES	67070400	815	1.3	385	6	694	1.1	3597	7	4004	8	2989	6
BAR SUPPLIES	67070500	288	5	46		43	1	754	1	480		358	1
LIGHTING SUPPLIES	67070700	207	3	69	1	105	2	844	2	716	1	461	1
JANITORIAL SUPPLIES	67070800	346	5	144	2	242	4	1647	3	1496	2	1355	3
NURSERY SUPPLIES	67070900			19				153		196		87	

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 7 DECEMBER 1972 PROGRAM LPC80-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
OFFICE SUPPLIES	67071000	24		29		166	3	251		300		362	1
POSTAGE SUPPLIES	67071100	50	1	48		56	1	465	1	496		359	1
DUPLICATING SUPPLIES	67071200			15				284	1	156			
PIN AMORTIZATION	67071300	410	6	398	6			4248	8	4136	8	2720	6
VENDING SUPPLIS	67071600			6				9		64			
OTHER SUPPLIES	67079900	37	1	12				301	1	120		466	1
TOTAL OPERATING SUPPLIES		3199	5.0	1627	2.8	1567	2.5	16127	3.2	16900	3.4	11509	2.4
LAUNDRY													
LAUNDRY-BOWLING	67080100	71	1	35		82	1	487	1	364		488	1
LAUNDRY-BAR	67080200	9		7				33		76		2	
LAUNDRY-RESTAURANT	67080300	24		7		20		192		76		108	
TOTAL LAUNDRY		104	2	49	1	102	2	712	1	516	1	598	1
UTILITIES													
GAS	67090100	293	5	1587	2.7	279	3	2607	5	14508	3.3	3802	8
ELECTRICITY	67090200	1407	2.2			273	2.1	14575	2.9			12333	2.6
WATER	67090400	125	2			184	2	347	1			298	1
OTHER	67099900	78	1			58	1	314	1			211	
TOTAL UTILITIES		1903	3.0	1587	2.7	1713	2.8	17843	3.5	14508	3.3	16644	3.4
COMMUNICATION EXPENSE													
T & T -BASE CHARGES	67100100	204	3	183	3	116	2	815	2	1900	3	510	1
T & T -TOLL CHARGE	67100200	191	3			220	4	1051	2			1573	3
TOTAL COMMUNICATION EXPENSE		395	6	183	3	336	5	1866	4	1900	4	2083	4
OUTSIDE SERVICES													
CASUAL SERVICE-BOW	67110100	133	2			41	1	2253	4			1092	2
CASUAL SERVICE-R&B	67110200	534	8			51	1	1184	2			163	
DETECTIVE SERVICES	67110400			18		49	1	111		184		254	1
LEGAL SERVICES	67110500			70	1	95	2	158		840	1	468	1
PROP. TAX ADMIN.	67110600	24		24		24		250		248		250	1
TOTAL OUTSIDE SERVICES		691	1.1	112	2	260	4	3956	8	1272	3	2227	5
SALES TAX EXPENSE													
SALES TAX-PRO SHOP	67120100	226-	4			192-	3	846-	2			843-	2
SALES TAX-R&B	67120200	47-	1			174	3	13-				117-	

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INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 8 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
	67120300					234	4	917	2			10-	
SALES TAX OTHER	67120600	89	2			216	3	58				997	2
TOTAL SALES TAX EXPENSE		184-	3									27	
ADVERTISING & PROMOTN								77		232			
JR. SHIRTS	67130401	25		22		84	1	19				84	
COACH SHIRTS	67130402					84	1	96		232		84	
TOTAL		25		22									
FIRST LINE TROPHIES	67130501			208	3			2333	5	2160	4	5	
JUNIOR TROPHIES	67130503	44	1					317	1				
TOTAL		44	1	208	4			2650	5	2160	4	5	
	67130701	480	8	481	8			4992	1.0	5004	1.0	5289*	1.1
TOTAL		480	8*	481	8			4992	1.0	5004	1.0	5289	1.1
								25				508	1
BILLIARDS PROMOTIO	67131001	2				56	1	172				43	
BAR PROMOTION	67131201	15						32				330	1
LOCAL TOURN EXPENS	67131401					125	2	488	1			31	
NEWSPAPER ADVERTSI	67131501	25										10	
	67131503											153	
	67131504					130	2	73				1746	4
MAGAZINE ADVERTISI	67131505					768	1.3	2775	5	2056	4	2270	5
BOWLING PROMOTION	67131508	1453	2.3	198	3	1023	1.7	3336	7	2056	4		
TOTAL		1478	2.3	198	3								
TOTAL ADVERTISING & PROMOTN		2044	3.2	909	1.6	1163	1.9	11303	2.2	9452	1.9	8199	1.7
OTHER OPERATING						41	1	693	1			343	1
CASH SHORT/OVER BO	67140100	205	3			34	1	287	1			270	1
CASH SHORT/OVER RE	67140200	37	1			132	2	263	1			132	
ROBBERY LOSSES	67140400					54	1	580	1	120		276	1
FREIGHT	67140600	83	1	12		4-		97-				16-	
CASH RPTS OUT OF B	67140700	115-	2									340	1
	67140800											253	1
	67140900												

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 9 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
												92-	
PURCHASE DISCOUNTS	67141000	26-				15-		90-					
INVOICES IN TRANSI	67141200	1600-	2.5			1600-	2.6					8	
NSF CHECKS	67141300					5-		5					
C/D OUT OF BALANCE	67141900	23-	1					19				227-	
MISC EXPENSE	67149900	4-				6		298					
INVALID ACCOUNT P&	67149990	117	2			24		117					
TOTAL OTHER OPERATING		1326-	2.1	12		1333-	2.2	2075	4	120		1287	3
TOTAL CONTROLLABLE EXPENSE		26669	41.8	18900	32.3	19667	31.7	212522	41.7	186426	37.4	174810	36.2
TOT FIXED & CNTRL EXP		34130	53.6	26348	45.1	27326	44.1	284293	55.8	256481	51.4	240695	49.8
TOTAL GROSS MARGIN FOR COMP		17758	27.9	25328	43.3	23351	37.7	170434	33.4	186109	37.3	188592	39.0
MISC INCOME & EXP.													
ALLOC. HOME OFFICE EXP													
ALLOC OF HO EXP	77010100	2690	4.2	2693	4.6	2310	3.7	27976	5.5	28004	5.6	24024	5.0
TOTAL ALLOC. HOME OFFICE EXP		2690	4.2	2693	4.6	2310	3.7	27976	5.5	28004	5.6	24024	5.0
TOTAL TOT MISC INCOME & EXP		2690	4.2	2693	4.6	2310	3.7	27976	5.5	28004	5.6	24024	5.0
PROV FED & ST TAX													
INTEREST EXPENSE								10				86	
INTEREST EXPENSE	81020100							10				86	
TOTAL INTEREST EXPENSE													
PROV FOR ST INCOME TAX												1249	3
PROV STATE INC TAX	82010100	69	1			1048	1.7	2222	4			1249	3
TOTAL PROV FOR ST INCOME TAX		69	1			1048	1.7	2222	4				
PROV FOR FED INCOME TX													
FED INCOME TAX	83010100	1733	2.7	2116	3.6	8566	13.8	16958	3.3	22000	4.4	20666	4.3

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 4C

PROFIT OR LOSS - STATEMENT PAGE NO. 10 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL		YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	
TOTAL PROV FOR FED INCOME TX		1733	2.7	2116	3.6	8566	13.8	16958	3.3	22000	4.4	20666	4.3
TOT PROV FED & ST TAX		1802	2.8	2116	3.6	9614	15.5	19190	3.8	22000	4.4	22001	4.5
TOTAL PROFIT OR LOSS -		13266	20.8	20519	35.1	11427	18.4	123268	24.2	136105	27.3	142567	29.5
*******LINEAGE*******													
TEN PIN LINEAGE													
TEN PIN AD LGE LINES.	90010100	32521	53.6	29300	55.0			274478	56.6	245900	53.5		
ADULT OPEN	90010200	12333	20.3	13500	25.3			125909	25.9	124100	27.0		
ADULT SPECIAL	90010201	535	9	300	6			1755	4	3120	7		
ADULT TOURNAMENT	90010202							478	1	600	1		
TEN PIN JR LGE LINES.	90010300	4439	7.3	2700	5.1			31745	6.5	18650	4.1		
JUNIOR OPEN	90010400	5334	8.8	5500	10.3			43032	8.9	49500	10.8		
JUNIOR SPECIAL	90010401	534	9	200	4			6211	1.3	3480	8		
JUNIOR TOURNAMENT	90010402	297	5	1500	2.8			992	2	14000	3.0		
SCHOOLS	90010403			300	6			2134	4	600	1		
TOTAL TEN PIN LINEAGE		55993	92.4	53300	100.0			486734	100.3	459950	100.0		
TOTAL PAID LINEAGE		55993	92.4	53300	100.0			486734	100.3	459950	100.0		
AVERAGE PRICE BOWL REV.		66		64				65		64			
AVERAGE PRICE GROSS REV.		1.14		1.10				1.05		1.08			
FREE LINEAGE TEN PIN								1645	3				
TEN PIN FREE EMPLOYEE	90110100	190	3					2934	6				
TEN PIN FREE PROM.	90110200	99	2					87					
TEN PIN FREE INSTR.	90110300							11294	2.3				
TEN PIN FREE WARM UP	90110400	1456	2.4					89					
TEN PIN FREE R M	90110500							191					
TEN PIN FREE WALK OUT	90110600	51	1					19316-	4.0				
TEN PIN FREE BREAKAGE	90110700	1225	2.0					3076-	6				
TOTAL TEN PIN FREE LINEAGE		3021	5.0										
TOTAL FREE LINEAGE		3021	5.0					3076-	6				

INTERSTATE LANES 1020
RAMSEY NJ
REGION = 1 DISTRICT = 25
TENPIN 40

PROFIT OR LOSS - STATEMENT PAGE NO. 11 DECEMBER 1972 PROGRAM LP080-02

ACCOUNT DESCRIPTION	ACCOUNT NO.	CURRENT MONTH ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL	YEAR TO DATE ACTIVITY CURRENT ACTUAL		CURRENT BUDGET		LAST YEAR ACTUAL
INVALID LINEAGE	99909990	1615	2.7				1615	3			
TOTAL		1615	2.7				1615	3			
TOTAL LINEAGE		60629	100.0	53300	100.0		485273	100.0	459950	100.0	
AVERAGE PRICE BOWL REV.		61		64			65		64		
AVERAGE PRICE GROSS REV.		1.05		1.10			1.05		1.08		

BRUNSWICK CORPORATION --

USED PINSETTER SALES --

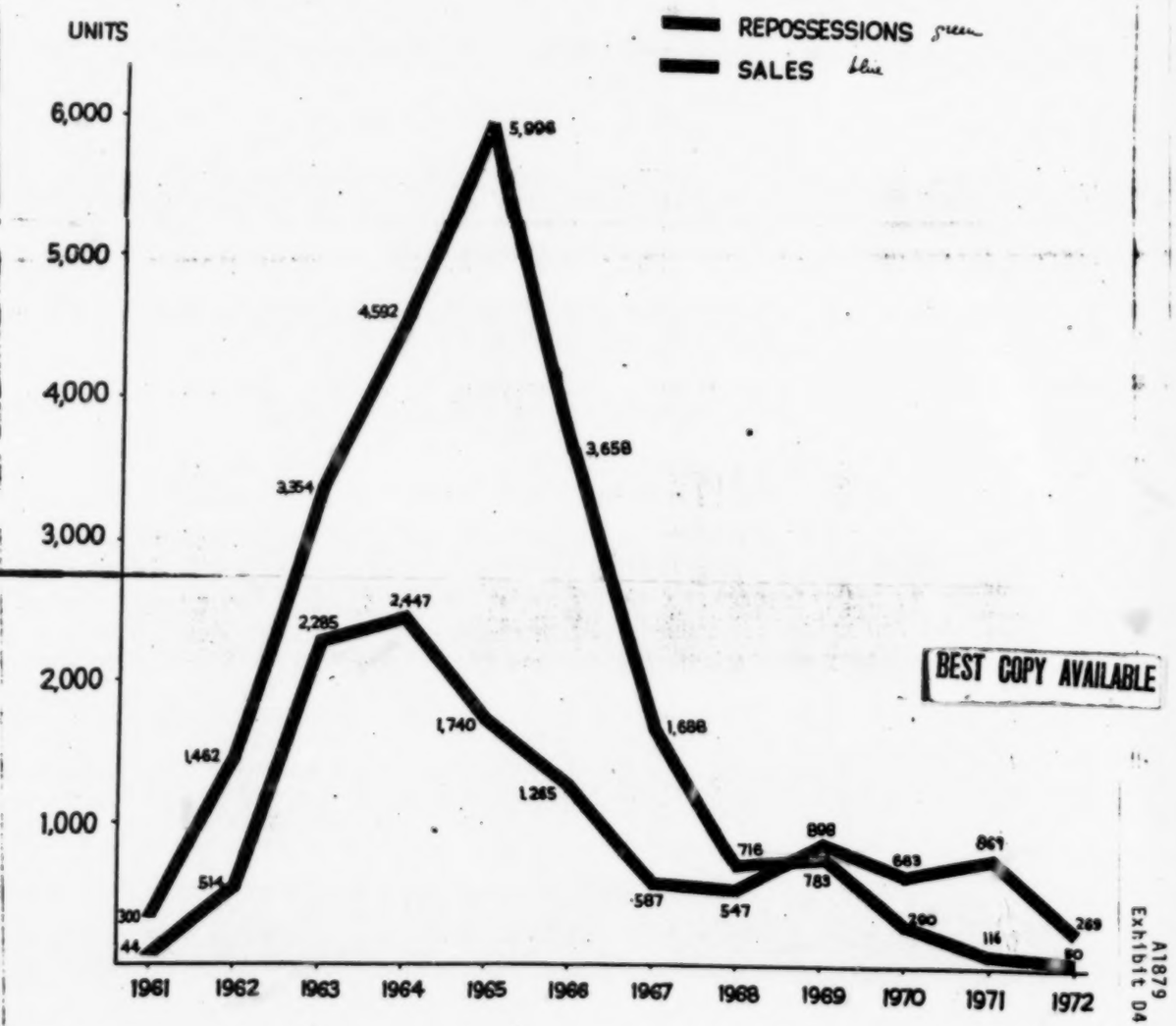
NUMBER OF UNITS BY YEAR

IN THE U.S.

Year	Sales
1961	44
1962	514
1963	2,285
1964	2,447
1965	1,740
1966	1,265
1967	587
1968	547
1969	898
1970	663
1971	869
1972	269

A1878
Exhibit D3

BRUNSWICK CORPORATION -- PINSETTERS REPOSSESSED AND USED PINSETTERS SOLD IN THE U.S. 1961 - 1972



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A1879
Exhibit D4

BRUNSWICK CORPORATION --

NET TRANSFERS* OF PINSETTERS TO BCO
FOR OPERATION, 1965-1972

IN THE U.S.

Year	Units
1965	3,639
1966	1,320
1967	50
1968	-4
1969	71
1970	140
1971	-64
1972	88

* Total transfers less deactivations, sales and leases, casualty losses, and other removals.

A1880
Exhibit D5

BRUNSWICK CORPORATION --

NUMBER OF BOWLING CENTERS BCO COMMENCED OPERATING AND NUMBER DISPOSED OF BY SALE, LEASE OR DEACTIVATION BY BCO, 1965-1972

IN THE UNITED STATES

	Commenced Operating	Disposed Of	Net Transfers	Operated Year-End
1965	124	0	124	124
1966	50	13	37	161
1967	15	14	1	162
1968	9	8	1	163
1969	10	8	2	165
1970	7	3*	4	169
1971	4	7	-3	166
1972	3	1	2	168
Total	222	54		

* 1 Destroyed by fire.

A1881
Exhibit D7

amend 4/11

BRUNSWICK CORPORATION --

BOWLING CENTER OPERATIONS (DOMESTIC) --
CONSOLIDATED STATEMENT OF CASH FLOW
FROM OPERATIONS, 1965-1972

12 Months Ended December 31	*
1965	($2,681,000)
1966	(177,000)
1967	543,000
1968	1,919,000
1969	2,927,000
1970	4,589,000
1971	6,942,000
1972	8,471,000

* Figures in ( ) are negative.

A1882
Exhibit D9

A1883
Exhibit D11

BRUNSWICK EXHIBIT 11

in evid

BRUNSWICK CORPORATION --
BOWLING CENTER OPERATIONS (DOMESTIC) --
NUMBER AND PERCENTAGE OF CENTERS
WITH POSITIVE OR NEGATIVE CASH
FLOWS FROM OPERATIONS
1965-1972

	1965		1966		1967		1968		1969		1970		1971		1972	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Positive Cash Flow	35	(28.2)	87	(54)	102	(63)	109	(66.8)	127	(76.9)	143	(84.6)	154	(93)	154	(91.7)
Negative Cash Flow	89	(71.8)	74	(46)	60	(37)	54	(33.2)	38	(23.1)	26	(15.4)	12	(7)	14	(8.3)
*Total	124	(100)	161	(100)	162	(100)	163	(100)	165	(100)	169	(100)	166	(100)	168	(100)

* Centers in operation at year end

A1884
Exhibit D13

BRUNSWICK EXHIBIT 13

in evid. 4/11

BRUNSWICK CORPORATION —
DOMESTIC BOWLING NOTES RECEIVABLES
AND 90-DAY DELINQUENCIES AT YEAR-END,
1964-1972

Amounts Delinquent
($000 Omitted)

	1964		1965		1966		1967		1968		1969		1970		1971		1972	
	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%
Total Balance Outstanding	$429,227	100.0	$310,716	100.0	$230,550	100.0	$174,750	100.0	$132,114	100.0	$100,997	100.0	$76,556	100.0	$62,803	100.0	$54,260	100.0
Balances Involved Over 90 Days Delinquent	114,232	26.6	74,622	24.0	34,254	14.9	23,523	13.5	15,788	11.9	7,344	7.3	5,003	6.5	4,110	6.5	2,786	5.1

Accounts Delinquent

	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%
Total Accounts	7,359	100.0	5,778	100.0	4,587	100.0	3,699	100.0	2,933	100.0	2,260	100.0	1,919	100.0	1,580	100.0	1,238	100.0
Number of Accounts Over 90 Days Delinquent	1,221	16.5	824	14.3	432	9.5	350	9.5	220	7.5	101	4.5	90	4.7	60	3.8	36	2.9

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BRUNSWICK EXHIBIT 16A

BRUNSWICK CORPORATION

ESTIMATED ORIGINAL AVERAGE COST TO BRUNSWICK OF LANES AND PINSETTERS TRANSFERRED TO BCO CENTERS IN 1965 IN THE UNITED STATES

	Lane	Pinsetter	Total
Direct Costs:			
Manufacturing Costs	$ 1,630	$ 2,860	$ 4,490
Installation Costs	745	276	1,021
Total Direct Costs	$ 2,375	$ 3,136	$ 5,511

A1885
Exhibit D16A

in evid. 4/16/73

BRUNSWICK CORPORATION --

ALLOCATION TO BOWLING CENTER OPERATIONS (U.S.) OF A SHARE OF BRUNSWICK'S CASH NEEDS, 1965-1975, FOR PAYMENTS ON LOANS OBTAINED PRIOR TO 1965 RELATED TO DOMESTIC BOWLING EQUIPMENT RECEIVABLES

Balance Owed at December 31, 1964 on Loans Related to Domestic Bowling Receivables	$ 243,535,035
Domestic Bowling Equipment Receivables at December 31, 1964	$ 364,178,884
Ratio of Loans to Receivables	66.9%
Unpaid Principal Balances of Receivables on Equipment Taken Over for Operation in 1965 by BCO	$ 36,523,991
Portion of Loans Allocated to All Equipment (3,615 Lanes) Taken Over for Operation by BCO in 1965 (66.9% of $ 36,523,991)	$ 24,435,000

- principal only, see 15

Annual Payments, 1965-1970, and Cash Need, 1971-1975, Per Lane Based on 3,615 Lanes, and Payout of $24,435,000 Plus Interest

Year	Principal	Interest	Total
1965	$ 856	$ 390	$ 1,246
1966	1,435	323	1,758
1967	678	249	927
1968	1,168	184	1,352
1969	443	139	582
1970	443	114	557
1971	393	89	482
1972	459	62	521
1973	428	37	465
1974	388	14	402
1975	50	1	51
Total	$ 6,741	$ 1,602	$ 8,343

A1886
Exhibit D20

Brunswick

CORPORATION

ANNUAL REPORT

1965

A1887
Exhibit D30

BOARD OF DIRECTORS

L. A. APPLEY	*President, American Management Association, New York*
B. E. BENSINGER	*Chairman of the Board and Chief Executive Officer*
R. F. BENSINGER	*Retired Chairman of the Board*
A. R. CAHILL	*Vice President, Finance*
J. L. HANIGAN	*President*
W. M. HEYMANN	*Director, The First National Bank of Chicago*
S. P. JACOBSON	*Senior Vice President*
E. C. KIEKHAEFER	*Vice President*
S. E. MEYERS	*Retired Executive Vice President*
J. T. RETTALIATA	*President, Illinois Institute of Technology, Chicago*
J. G. SEVCIK	*President, Burton-Dixie Corporation, Chicago*
E. A. STEPHAN	*Partner, Mayer, Friedlich, Spiess, Tierney, Brown & Platt, Chicago, General Counsel*
R. E. STRAUS	*Chairman of the Board of Directors, American National Bank and Trust Company of Chicago*
L. H. SWANLUND	*Retired Vice President, Finance*
H. J. SZOLD	*Partner, Lehman Brothers, New York*

CORPORATE OFFICERS

B. E. BENSINGER	*Chairman of the Board and Chief Executive Officer*
J. L. HANIGAN	*President*
S. P. JACOBSON	*Senior Vice President*
A. R. CAHILL	*Vice President, Finance*
C. E. ERB	*Vice President*
E. C. KIEKHAEFER	*Vice President*
G. R. KOONS	*Vice President*
M. RUDO	*Vice President*
J. F. URBANEK	*Vice President*
J. N. WILLMAN	*Vice President*
A. W. McMAHON	*Treasurer*
J. F. MEYERHOFF	*Controller*
W. L. NIEMANN	*Secretary*
K. E. ABERNATHY	*Assistant Vice President*
R. G. BENSINGER	*Assistant Vice President*
J. W. McQUEEN	*Assistant Treasurer*
A. R. SIELAFF	*Assistant Treasurer*
W. B. BREMER	*Assistant Secretary*
F. J. KRAUS	*Assistant Secretary*
V. M. McALLISTER	*Assistant Secretary*
E. VANNEMAN, JR.	*Assistant Secretary*

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Exhibit D30

DIVISIONS AND SUBSIDIARIES

RECREATION

BOWLING DIVISION—Chicago, Illinois
BOWLING CENTER OPERATIONS DIVISION—Chicago, Illinois
Operating 134 bowling centers in the United States and Canada
KIEKHAEFER CORPORATION—Fond du Lac, Wisconsin
INTERNATIONAL MERCURY OUTBOARDS LTD.—Fond du Lac, Wisconsin
KIEKHAEFER MERCURY of CANADA LIMITED—Toronto, Canada
KIEKHAEFER MERCURY of AUSTRALIA PTY. LIMITED—Sydney, Australia
MERCURY OUTBOARDS INTERNATIONAL PTY. LIMITED—Melbourne, Australia
MACGREGOR/BRUNSWICK DIVISION (formerly SPORTS DIVISION)—Evendale (Cincinnati), Ohio
BRUNSWICK-ROYAL, INC.—Ponce, Puerto Rico
OWENS YACHT DIVISION—Baltimore, Maryland
ZEBCO DIVISION—Tulsa, Oklahoma

HEALTH AND SCIENCE

HEALTH and SCIENCE DIVISION—St. Louis, Missouri
ALOE INTERNATIONAL, INC.—St. Louis, Missouri
BIOLOGICAL RESEARCH, INC.—St. Louis, Missouri
BRUNSWICK LABORATORIES, INC.—St. Louis, Missouri
ROEHR CHEMICALS, INC.—Long Island City, New York
ROEHR PRODUCTS COMPANY, INC.—DeLand, Florida
SHERIDAN CORPORATION—Argyle, New York
HEALTH and SCIENCE DIVISION of BRUNSWICK CORPORATION (U.K.) LIMITED (formerly Brunswick Health & Science Limited)—Worthing, Sussex, England

EDUCATION

SCHOOL EQUIPMENT DIVISION—Kalamazoo, Michigan

DEFENSE

DEFENSE PRODUCTS DIVISION—Muskegon, Michigan
INDUSTRIAL PRODUCTS DIVISION—Muskegon, Michigan

OTHER

A. M. T. REAL ESTATE CORPORATION—Chicago, Illinois
BRUNSWICK INTERNATIONAL FINANCE A. G.—Zurich, Switzerland
BRUNSWICK PROPERTIES, INC.—Chicago, Illinois
COMMUNITY RESOURCES DIVISION—Chicago, Illinois
NEW PRODUCTS DIVISION—Chicago, Illinois

INTERNATIONAL

BRUNSBOWL PTY. LIMITED—Sydney, N. S. W., Australia
BRUNSWICK A. G.—Zurich, Switzerland
BRUNSWICK BELGIUM, S. A.—Brussels, Belgium
"BRUNSWICK" BOWLING GmbH—Berlin, West Germany
BRUNSWICK of CANADA LIMITED—Cookaville, Ontario, Canada
BRUNSWICK CORPORATION (U.K.) LIMITED—London, England
BRUNSWICK DANSK-AMERIKANSK A/S—Copenhagen, Denmark
BRUNSWICK FAR EAST INCORPORATED—Tokyo, Japan
BRUNSWICK FRANCE (S.a.r.l.)—Paris, France
BRUNSWICK GmbH—Frankfurt/Main, West Germany
BRUNSWICK GESELLSCHAFT m.b.H.—Vienna, Austria
BRUNSWICK INTERNATIONAL, C. A.—Caracas, Venezuela
BRUNSWICK INTERNATIONAL GmbH—Duesseldorf, West Germany
BRUNSWICK of IRELAND LIMITED—Dublin, Ireland
BRUNSWICK ISRAEL LIMITED—Tel Aviv, Israel
BRUNSWICK ITALIANA S.p.A.—Roma, Italy
BRUNSWICK de MEXICO, S. A. de C. V.—Mexico, D.F., Mexico
BRUNSWICK NEDERLAND N.V.—Breda, The Netherlands
BRUNSWICK del PERU S.A.—Lima, Peru
BRUNSWICK'S SVENSKA A/B—Stockholm, Sweden
NIPPON BRUNSWICK K.K.—Tokyo, Japan
NORSK BRUNSWICK A/S—Oslo, Norway
OY BRUNSWICK FINLAND—Helsinki, Finland
TOWN & COUNTRY BOWLING CENTRES LIMITED—London, England

A1889
Exhibit D30

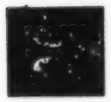
HIGHLIGHTS

	1965	1964
YEAR ENDED DECEMBER 31,		
Net sales and revenues	$314,876,000*	$302,217,000*
Net earnings (loss)	(76,932,000)	602,000
Additions to plant and equipment, including in 1965 the transfer of repossessed bowling equipment inventory to Brunswick-operated centers	31,517,000	11,873,000
Depreciation, amortization, etc.	14,758,000	10,324,000
PER SHARE OF COMMON STOCK		
Net earnings (loss)	$(4.21)	$ 0.03
Book value	7.18	11.42
AT DECEMBER 31,		
Working capital	$250,902,000	$399,968,000
Plant and equipment, net	76,158,000	62,820,000
Total assets	512,149,000	650,908,000
Notes payable—current	82,850,000	48,977,000
Long-term liabilities	203,087,000	266,839,000
Shareholders' equity	131,681,000	207,641,000
Number of shares outstanding	18,288,404	18,179,931
Number of shareholders	92,362	94,622
Number of employees	16,790	13,394

*Does not include repossessed bowling equipment sales of $15,693,000 in 1965 and $19,836,000 in 1964.

A1890
Exhibit D30

TO THE SHAREHOLDERS:



By far the most important event that occurred in 1965 was the decision to adjust inventory values and reserves for possible losses on receivables, as announced in a special letter to shareholders on December 14, 1965. This action resulted in a net loss for the year of $76,932,000 after related income tax credits.

The operating results before the very large year-end adjustments are not separately stated. However, operating results, excluding year-end adjustments, would have been almost the same as in 1964, or essentially a breakeven.

These adjustments were made almost entirely within the bowling segment of your Company's business. In the United States and Canada, the lack of any significant demand in the market for bowling capital goods, both new and used, became evident late in 1965 after the normal selling season. Also, import restrictions and tightening of credit, coupled with a decline of bowler interest in some areas, made it clear that the market abroad is not likely to expand as the domestic market did in the late Fifties and early Sixties.

Your management does not relish reporting a loss at any time, particularly one of this magnitude. It should be recognized, however, that the steps taken in view of the situation as it now exists, together with the continuing of vigorous collection efforts, will relieve future operations from burdens of the past.

As a consequence of the year-end adjustments, the Company filed a refund claim of $18,225,000 for Federal income taxes paid in prior years. When received, these funds will be applied to debt reduction.

Also, a new loan agreement was entered into with the banks and insurance companies which combined most of the domestic long-term debt under a single loan agreement amounting to $190,000,000 payable over the next ten years.

Looking to the future, three additional actions taken in 1965 should enhance the long-term prospects of the Company:

- The first was the establishment of a corporate Technical and New Business Division. This division consists of a research team; a Product Development and Engineering organization, which has already contributed some significant new products to the operating divisions; and a New Products group, which will develop marketing and manufacturing capabilities for new products. Currently, the New Products unit is deeply involved in the pilot production and marketing of Brunsmet, Brunswick's new metallic filament.
- The second significant development was the formation of the

A1891
Exhibit D30

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS/December 31, 1965

NOTE 1—PRINCIPLES OF CONSOLIDATION: The consolidated financial statements include the accounts of the Company and all its domestic and foreign subsidiaries.

NOTE 2—LOSSES FROM BOWLING OPERATIONS: As a result of the decline in the world-wide market for bowling equipment during 1965, the Company and its subsidiaries made appropriate adjustments to recognize the reduced value of equipment repossessed in 1965 and to give effect to possible future repossessions of bowling equipment at reduced values. The Company and its subsidiaries also wrote down bowling equipment inventories at year-end and provided for estimated losses on the termination of certain bowling operations throughout the world. Substantially all of the net loss for 1965 resulted from these developments.

NOTE 3—INCOME TAXES: The Company and its subsidiaries have followed, for book purposes, the practice of recording income from sales financed by long-term installment notes receivable when customers take delivery of bowling lanes, automatic pinsetters and related products. This practice, which is known as the "accrual basis," is the income-reporting method followed by most companies. For income tax purposes, the Company and its subsidiaries follow the "installment basis" of reporting income from such sales.

Income taxes applicable to installment sales have been provided on the basis of book income at the tax rate in effect in the year of sale. These taxes are payable over the terms of installment notes receivable as payments are received from customers. Accordingly, deferred income taxes of $28,330,000 at December 31, 1965 (after reflecting the income tax effect of the substantial bowling losses charged against 1965 operations) will not be payable until future years. The loss in 1965 also resulted in carry-back refund claims of $18,225,000 for Federal income taxes paid in prior years.

Because of reductions in the United States Federal income tax rates, the provision (credits) for income taxes includes credits of $2,300,000 in 1965, and $1,100,000 in 1964, for the difference between income taxes at the current rate and the amount of deferred income taxes previously provided at higher rates.

NOTE 4—INSTALLMENT NOTES: Installment notes receivable are stated at principal balances after deducting unearned interest of $61,559,000 in 1965, and $80,273,000 in 1964; such interest will not be realized to the extent that the installment notes are not collected.

NOTE 5—REPOSSESSED BOWLING EQUIPMENT: Net sales in the accompanying consolidated statements of earnings do not include repossessed bowling equipment sales of $15,693,000 in 1965, and $19,636,000 in 1964. When equipment is repossessed, the difference between the unpaid principal balance of the related installment note receivable and the inventory carrying value is deducted from the reserve for possible losses on receivables. When the equipment is subsequently resold, the excess of the sales price over the inventory value is added to the reserve for possible losses on receivables.

While the quantities of repossessed bowling equipment included in finished goods inventories were greater at December 31, 1965, such equipment was carried at $3,527,000 compared with $17,685,000 at December 31, 1964, based on estimated realizable values, after reflecting the 1965 adjustments (see Note 2).

NOTE 6—RESERVES FOR POSSIBLE LOSSES ON RECEIVABLES: During 1965, the provision for possible losses on receivables totaled $111,362,000 and repossessions and other charges against the reserves, less recoveries, were $71,265,000.

NOTE 7—NOTES PAYABLE—BANK, INSURANCE COMPANIES, ETC. (CANADIAN SUBSIDIARY)—SECURED: In March, 1966, a Canadian subsidiary entered into an amended loan agreement to reduce its bank and insurance company notes payable from $18,850,000 to $11,000,000 by applying a related collateral cash deposit. Under the amended agreement the notes payable are secured by a pledge of all Canadian installment notes receivable (with principal balances of $32,338,000 at December 31, 1965), and the collections thereon, after certain expenses as defined, are restricted to the payment of interest and principal on the notes payable. The amended agreement provides for minimum principal payments of $2,000,000 annually through 1969 and $1,000,000 thereafter through 1972. The notes payable have been guaranteed by the parent company.

NOTE 8—LONG-TERM NOTES PAYABLE—UNSECURED: In December, 1965, the Company repaid $10,000,000 of $100,000,000 borrowed from a group of banks under a revolving credit agreement.

As a consequence of the adjustments made by the Company and its subsidiaries in 1965 (see Note 2), it became necessary to renegotiate certain of the terms and conditions of the loan agreements covering the Company's long-term indebtedness to banks and insurance companies. As a result of these negotiations, a new loan agreement was entered into in March, 1966, which, by its terms, superseded all prior agreements with the banks and insurance companies and combined the $90,000,000 balance of bank loans with $100,000,000 of insurance company loans into one loan agreement. This agreement provides for 5¾% promissory notes with principal payments ranging from $24,000,000 to $14,000,000 per year through 1975. Principal amounts of $20,000,000 are payable on December 15, 1966; in addition, the refund of Federal income taxes ($18,225,000—see Note 3) when received will be payable on the notes.

Other unsecured notes payable of $1,905,000 are outstanding. Interest rates on these notes range from 4% to 6½% with final maturities in 1981.

NOTE 9—LONG-TERM NOTES PAYABLE—SECURED: Certain plant and equipment additions have been financed by mortgage notes on the property acquired, and certain installment notes receivable and property of foreign subsidiaries have been financed by secured notes. Interest rates on these notes range from 4½% to 8½% (the latter rate being applicable to certain foreign notes), and annual principal payments through 1988 range from $137,000 to $1,770,000.

NOTE 10—DEBENTURES: The Company has outstanding $25,623,000 of 4½% convertible subordinated debentures, with annual sinking fund requirements of $1,500,000 beginning in 1971. A subsidiary has issued $5,000,000 of 5¾% collateral trust debentures, with annual sinking fund requirements of $500,000 beginning in 1969; substantially all the assets of this subsidiary have been pledged to secure these debentures.

NOTE 11—DIVIDEND AND OTHER RESTRICTIONS: The March, 1966, loan agreement with banks and insurance companies and agreements relating to the C.I.T. Corporation notes payable and the convertible subordinated debentures contain dividend, working capital, foreign in-

A1892
Exhibit D30

vestment, net worth and various other restrictions. Cash dividends may be paid only to the extent of 25% of consolidated net income of the Company and its domestic subsidiaries, as defined, in any fiscal year, and only if various ratio, working capital and debt reduction tests have been met. As of December 31, 1965, no consolidated earnings retained in the business were available for payment of cash dividends or for acquisitions of capital stock.

NOTE 12—DEFERRED COMPENSATION: Under various employee bonus plans, additional compensation of officers and employees earned in 1962 and prior years is payable in future years in aggregate annual amounts ranging from $224,000 to $59,000. No bonus was earned under these plans in 1965.

NOTE 13—COMMON STOCK: In 1965, options for 106,000 shares were granted, under a stock option plan, at not less than the highest market price on the dates of grant, and options for 65,719 shares were canceled or expired. Options for 4,000 shares were exercised during the year. At December 31, 1965, 432,072 shares of common stock were reserved for issuance to officers and key employees under options outstanding at prices ranging from $3.30 to $57.75 per share, of which options for 227,209 shares were exercisable. All options expire within ten years or less from date of grant. The Company's stock option plans have now expired and no further options may be granted thereunder.

Under the employees' stock purchase plan (which excludes key management employees), 124,157 shares of common stock are reserved for issuance to eligible employees. In 1965, the Company granted rights and employees purchased 88,171 shares at 85% of market at dates of grant.

The Company issued 16,302 additional shares of common stock in 1965 in connection with the acquisitions of Biological Research, Inc. in 1961 and Ortho Chemical Corporation in 1962. The acquisition agreement for Ortho Chemical Corporation provides that additional shares of common stock may be issued in the years 1966-1968, depending on operating results of the successor company.

At December 31, 1965, 502,427 shares of common stock were reserved for the conversion of convertible subordinated debentures at $50.66 per share.

NOTE 14—LEGAL MATTERS: A number of lawsuits and claims are pending against the Company and its subsidiaries. Based upon the opinions of counsel as to the ultimate disposition of these matters, management believes that the liability, if any, will not be material.

The Federal Trade Commission has requested certain information concerning the Company's operation of repossessed bowling establishments throughout the country. In the opinion of counsel, these operations are lawful and not in contravention of any Federal law or regulation.

NOTE 15—LONG-TERM LEASES: As of December 31, 1965, the Company and its subsidiaries had entered into various lease agreements with terms of more than three years, which expire on various dates to 1987. Aggregate rentals are approximately $3,400,000 annually. These leases are for space in general offices, branches, factories, warehouses, service centers and certain Brunswick-operated bowling centers.

NOTE 16—UNFUNDED PAST-SERVICE COSTS: The Company and its subsidiaries maintain pension and retirement plans, which provide for retirement benefits based on service, for substantially all salaried and hourly employees. The Company is providing for the current and past-service costs of these plans based upon actuarial determinations. The unfunded past-service costs under these plans were approximately $11,000,000 at December 31, 1965.

ACCOUNTANTS' OPINION

TO THE SHAREHOLDERS AND DIRECTORS OF
BRUNSWICK CORPORATION:

We have examined the consolidated balance sheet of BRUNSWICK CORPORATION (a Delaware corporation) AND SUBSIDIARIES as of December 31, 1965, and the related consolidated statements of earnings, capital surplus and earnings retained in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We had made a similar examination for the preceding year.

In our opinion, the accompanying consolidated balance sheet and consolidated statements of earnings, capital surplus and earnings retained in the business present fairly the financial position of Brunswick Corporation and Subsidiaries as of December 31, 1965, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Arthur Andersen & Co.

Chicago, Illinois, March 23, 1966.

A1893
Exhibit D30

CREDIT AND COLLECTION

were rescheduled to reflect a $6,000,000 reduction of debt, which amount was paid in March, 1966.

The new domestic loan agreement contains covenants that are more restrictive than those in the former agreements. For this reason, and because it is desirable for the Company to reduce debt as rapidly as possible, it is not likely that any dividends will be paid for some time.

In spite of the severity of the loss resulting from the year-end adjustments, the action taken should produce certain benefits for the Company. For example, a Federal income tax carryback refund claim of $18,225,000 arising from the 1965 loss will improve the Company's financial position through cash recovery and earlier reduction of debt. Furthermore, additional net tax credits of $33,425,000 will have the effect of reducing future tax payments which the Company otherwise would have been required to make. However, these latter credits will have no effect on the income statements of the Company in the future because they have been reflected in the 1965 financial statements as a reduction in deferred income taxes payable.

The write-down of bowling equipment inventories and the increase in reserves should not be interpreted as any lessening of interest in the bowling industry. To the contrary, diligent efforts will continue to be made to sell new and used equipment on a sound financial basis for operation in promising locations and to promote the sport of bowling.

Installment notes receivable principal balances were $319,050,000 at December 31, 1965, down $121,634,000 from $440,684,000 at December 31, 1964. Accounts receivable were $60,532,000 at December 31, 1965, compared with $56,745,000 at the prior year-end, an increase of $3,787,000.

Brunswick enjoys a substantial cash flow from collections on bowling installment notes receivable. In 1965, these collections more than covered the following uses and totaled $87,119,000

Payments on debt in 1965—		
C.I.T. borrowings	$20,935,000	
Bank borrowings	10,000,000	
Mortgages and other	5,169,000	
Total payments on borrowings	$36,104,000	
Interest paid on borrowings	18,520,000	
Total		54,624,000
Collections available for other purposes		$32,495,000

A1894
Exhibit D30

The remaining $32,495,000, when combined with funds generated from other sources, was sufficient to finance the Company's additions to fixed assets; to pay state, local and Federal income taxes of $8,753,000 (principally by subsidiary companies); to meet general operating needs; and also to produce a net increase of $9,879,000 in cash and marketable securities at the end of 1965, compared with December 31, 1964. In March, 1966, Brunswick of Canada Ltd., paid $6,000,000 of its long-term loans, leaving a balance of $11,000,000, and at the same time, retired its outstanding bank loans of $1,850,000.

In many instances, Brunswick was able to assist customers in the orderly retirement of their debts from revenues generated by their bowling centers. However, not all customer problems could be resolved on a financially prudent basis. Therefore, despite the Company's earnest efforts to reach mutually satisfactory arrangements, repossessions and inventories of used equipment increased.

PLANT AND EQUIPMENT

Additions to plant, equipment and leasehold improvements totaled $31,517,000 in 1965, an increase of $19,644,000 over the $11,873,000 expended during 1964. Most of this increase resulted from the transfers of repossessed bowling equipment from installment notes receivable and inventories to Brunswick-operated centers. These transfers did not require any outlay of cash. Depreciation, amortization, etc., amounted to $14,758,000 in 1965.

SHAREHOLDERS' EQUITY

Shareholders' equity was $131,581,000 at the end of 1965 compared with $207,641,000 at December 31, 1964. The decrease resulted from the very large charges against 1965 earnings. The book value of the common stock at December 31, 1965, was $7.19 per share on 18,288,404 shares outstanding, compared with $11.42 per share on 18,179,931 shares outstanding at the end of 1964.

MANAGEMENT CHANGES

Mr. S. P. Jacobson, corporate Senior Vice President, has assumed responsibility for the Technical and New Business Division. He was previously in charge of the Bowling and International Divisions of the Company.

Mr. J. F. Urbanek, corporate Vice President, was named President of the Bowling Division, which now includes the former International Division.

Mr. J. F. Meyerhoff was elected corporate Controller, replacing Mr. Urbanek in this position.

Mr. J. W. Kelly was appointed President, MacGregor/Brunswick Division.

Mr. R. G. Bensinger was appointed President of the new Community Resources Division and Assistant Vice President of the Company.

A1895
Exhibit 030

BRUNSWICK CORPORATION AND SUBSIDIARIES

COMPARATIVE FINANCIAL DATA FOR TEN YEARS *(in thousands of dollars)*

	1965
SALES AND EARNINGS YEAR ENDED DECEMBER 31—(A)	
Net sales and revenues	$314,878
Net earnings (loss)	(78,932)
BALANCE SHEET HIGHLIGHTS AT DECEMBER 31—(A)	
Cash and marketable securities	$ 40,171
Notes and accounts receivable, net	280,740
Inventories	79,247
Plant and equipment, net	78,158
Total assets	512,149
Notes payable and long-term liabilities	285,937
OTHER DATA (A)	
Additions to plant and equipment	$31,517(B)
Depreciation, amortization, etc.	14,758
Earnings (loss) per share of common stock (C)	(4.21)
Dividends per share of common stock (C)	—
Book value per share of common stock (C)	7.19

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1964	1963	1962	1961	1960	1959	1958	1957	1956
$302,217	$315,653	$359,343	$426,865	$404,343	$349,208	$280,644	$198,090	$129,564
602	(10,109)	24,307	44,982	38,243	31,075	18,063	9,646	7,716
$ 30,292	$ 38,454	$ 36,976	$ 21,178	$ 25,465	$ 12,624	$ 9,703	$ 4,913	$ 4,384
448,684	497,992	564,267	543,749	414,617	283,419	179,844	93,598	21,749
97,420	84,851	89,130	76,647	79,808	58,750	43,776	31,079	30,230
62,820	62,017	59,058	43,534	34,861	29,536	19,332	13,588	11,554
650,908	697,514	759,899	692,962	561,107	389,880	256,523	147,708	73,620
315,816	349,455	358,924	299,148	259,264	163,666	111,289	61,836	8,750
$11,873	$15,634	$23,840	$16,870	$13,399	$14,853	$10,387	$4,435	$3,056
10,324	9,877	7,585	6,570	5,360	3,802	3,379	2,671	1,897
0.03	(0.56)	1.36	2.56	2.20	1.83	1.19	0.79	0.68
—	0.30	0.60	0.45	0.32	0.22	0.13	0.07(D)	0.06(D)
11.42	11.41	12.25	11.39	9.04	6.64	4.95	4.17	3.58

(A) Data for companies acquired on a pooling-of-interests basis have been included for all periods where significant. Data for all other acquired companies have been included only from the respective dates of acquisition.

(B) In 1965, the additions to plant and equipment include the transfer of repossessed bowling equipment inventory to Brunswick-operated centers.

(C) Based on the number of shares outstanding at each year-end, after reflecting stock dividends, stock splits and the issuance of shares of common stock in connection with mergers on a pooling-of-interests basis.

(D) Plus 5% stock dividend.

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Exhibit D30

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BRUNSWICK CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS / *as of December 31, 1965 and 1964*

ASSETS	1965	1964
CURRENT ASSETS:		
Cash (including $8,073,000 collateral deposit in 1965 applied against current notes payable in March, 1966)	$ 35,389,000	$ 22,740,000
Marketable securities, at cost which approximates market ($4,671,000 in 1965 pledged for collateral trust debentures)	4,802,000	7,552,000
Federal income tax refund claims (Notes 3 and 8)	18,225,000	—
Notes and accounts receivable—		
Installment notes, at principal balances including $227,928,000 in 1965 and $315,188,000 in 1964 due after one year (principal balances of $100,204,000 in 1965 and $153,740,000 in 1964, plus unearned interest thereon, assigned to C.I.T. Corporation and others) (Notes 4 and 7)	319,060,000	440,684,000
Accounts	80,532,000	56,745,000
Less—Reserves for possible losses on receivables (Note 6)	(88,842,000)	(48,745,000)
Inventories, at lower of cost or market—		
Finished goods (Note 5)	45,084,000	62,364,000
Work in process	22,929,000	22,780,000
Raw materials and supplies	11,254,000	12,276,000
Total current assets	$428,383,000	$576,396,000
PREPAID EXPENSES AND OTHER ASSETS	7,808,000	11,892,000
PLANT AND EQUIPMENT, at cost (Note 9):		
Land	3,679,000	3,654,000
Buildings, machinery and equipment	127,580,000	103,872,000
Less—Reserves for depreciation, amortization, etc.	(58,111,000)	(44,708,000)
	$512,148,000	$650,908,000

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Exhibit D30

LIABILITIES	1965	1964
CURRENT LIABILITIES:		
Notes payable—		
Banks and other—principally secured	$ 1,171,000	$ 1,965,000
Bank, insurance companies, etc. (Canadian subsidiary)—secured (Note 7)	18,850,000	1,850,000
C.I.T. Corporation—secured	22,600,000	43,535,000
Current maturities of long-term notes	40,229,000	1,627,000
Accounts payable	25,462,000	25,286,000
Accrued expenses	22,899,000	16,568,000
Income taxes (Note 3)—		
Current	17,940,000	18,597,000
Deferred	28,330,000	67,000,000
Total current liabilities	$177,481,000	$176,428,000
LONG-TERM LIABILITIES:		
Notes payable—		
Unsecured (Note 8)	$153,680,000	$204,471,000
Secured (Note 9)	17,976,000	30,371,000
4½% convertible subordinated debentures, due 1981 (Note 10)	25,623,000	25,623,000
5¾% collateral trust debentures, due 1978 (Note 10)	5,000,000	5,000,000
Deferred compensation (Note 12)	808,000	1,374,000
	$203,087,000	$266,839,000
CAPITAL STOCK AND SURPLUS:		
Common stock, without nominal or par value; authorized 25,000,000 shares; issued and outstanding, 1965—18,288,404 shares; 1964—18,179,931 shares (Note 13)	$ 13,716,000	$ 13,635,000
Capital surplus	50,032,000	49,241,000
Earnings retained in the business (Note 11)	67,833,000	144,765,000
	$131,581,000	$207,641,000
	$512,148,000	$650,908,000

The accompanying notes on pages 14 and 15 are an integral part of these balance sheets.

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Exhibit D30

BRUNSWICK CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF EARNINGS / *for the years ended December 31, 1965 and 1964*

	1965	1964
INCOME:		
Net sales and revenues	$314,876,000*	$302,217,000*
Interest income	20,197,000	22,951,000
Total income	$335,073,000	$325,168,000
COSTS AND EXPENSES:		
Cost of sales and services	$234,801,000	$218,786,000
Selling and administrative expenses	75,567,000	71,738,000
Interest expense	18,520,000	21,717,000
Provision for estimated losses on receivables	111,362,000	9,253,000
Write-down of bowling inventories	8,965,000	—
Estimated losses on termination of foreign bowling operations	12,333,000	—
Other expenses, net	2,307,000	2,582,000
Provision (credits) for Federal, state and foreign income taxes (Note 3)	($1,880,000)	490,000
Total costs and expenses (including depreciation, amortization, etc., of $14,758,000 in 1965 and $10,324,000 in 1964)	$412,005,000	$324,566,000
NET EARNINGS (LOSS) for the year (Note 2)	$(76,932,000)	$ 602,000

*Does not include repossessed bowling equipment sales of $15,893,000 in 1965 and $19,636,000 in 1964 (Note 2).

The accompanying notes on pages 14 and 15 are an integral part of these statements.

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Exhibit D30

CONSOLIDATED STATEMENT OF CAPITAL SURPLUS

for the year ended December 31, 1965

BALANCE AT DECEMBER 31, 1964	$49,241,000
EXCESS OF QUOTED VALUE OR SELLING PRICE OVER RECORDED VALUE OF:	
Common stock issued for companies acquired in prior years (16,302 shares) (Note 13)	167,000
Common stock sold under stock option (4,000 shares) and employees' stock purchase (88,171 shares) plans (Note 13)	624,000
BALANCE AT DECEMBER 31, 1965	$50,032,000

CONSOLIDATED STATEMENT OF EARNINGS RETAINED IN THE BUSINESS

for the year ended December 31, 1965

BALANCE AT DECEMBER 31, 1964	$144,765,000
NET (LOSS) FOR THE YEAR (Note 2)	(76,932,000)
BALANCE AT DECEMBER 31, 1965 (Note 11)	$ 67,833,000

The accompanying notes on pages 14 and 15 are an integral part of these statements.

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Exhibit D30

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS/*December 31, 1965*

NOTE 1—PRINCIPLES OF CONSOLIDATION: The consolidated financial statements include the accounts of the Company and all its domestic and foreign subsidiaries.

NOTE 2—LOSSES FROM BOWLING OPERATIONS: As a result of the decline in the world-wide market for bowling equipment during 1965, the Company and its subsidiaries made appropriate adjustments to recognize the reduced value of equipment repossessed in 1965 and to give effect to possible future repossessions of bowling equipment at reduced values. The Company and its subsidiaries also wrote down bowling equipment inventories at year-end and provided for estimated losses on the termination of certain bowling operations throughout the world. Substantially all of the net loss for 1965 resulted from these developments.

NOTE 3—INCOME TAXES: The Company and its subsidiaries have followed, for book purposes, the practice of recording income from sales financed by long-term installment notes receivable when customers take delivery of bowling lanes, automatic pinsetters and related products. This practice, which is known as the "accrual basis," is the income-reporting method followed by most companies. For income tax purposes, the Company and its subsidiaries follow the "installment basis" of reporting income from such sales.

Income taxes applicable to installment sales have been provided on the basis of book income at the tax rate in effect in the year of sale. These taxes are payable over the terms of installment notes receivable as payments are received from customers. Accordingly, deferred income taxes of $28,330,000 at December 31, 1965 (after reflecting the income tax effect of the substantial bowling losses charged against 1965 operations) will not be payable until future years. The loss in 1965 also resulted in carryback refund claims of $18,225,000 for Federal income taxes paid in prior years.

Because of reductions in the United States Federal income tax rates, the provision (credits) for income taxes includes credits of $2,300,000 in 1965, and $1,100,000 in 1964, for the difference between income taxes at the current rate and the amount of deferred income taxes previously provided at higher rates.

NOTE 4—INSTALLMENT NOTES: Installment notes receivable are stated at principal balances after deducting unearned interest of $81,559,000 in 1965, and $80,273,000 in 1964; such interest will not be realized to the extent that the installment notes are not collected.

NOTE 5—REPOSSESSED BOWLING EQUIPMENT: Net sales in the accompanying consolidated statements of earnings do not include repossessed bowling equipment sales of $15,693,000 in 1965, and $19,636,000 in 1964. When equipment is repossessed, the difference between the unpaid principal balance of the related installment note receivable and the inventory carrying value is deducted from the reserve for possible losses on receivables. When the equipment is subsequently resold, the excess of the sales price over the inventory value is added to the reserve for possible losses on receivables.

While the quantities of repossessed bowling equipment included in finished goods inventories were greater at December 31, 1965, such equipment was carried at $3,527,000 compared with $17,685,000 at December 31, 1964, based on estimated realizable values, after reflecting the 1965 adjustments (see Note 2).

NOTE 6—RESERVES FOR POSSIBLE LOSSES ON RECEIVABLES: During 1965, the provision for possible losses on receivables totaled $111,362,000 and repossessions and other charges against the reserves, less recoveries, were $71,265,000.

NOTE 7—NOTES PAYABLE—BANK, INSURANCE COMPANIES, ETC. (CANADIAN SUBSIDIARY)—SECURED: In March, 1966, a Canadian subsidiary entered into an amended loan agreement to reduce its bank and insurance company notes payable from $18,850,000 to $11,000,000 by applying a related collateral cash deposit. Under the amended agreement the notes payable are secured by a pledge of all Canadian installment notes receivable (with principal balances of $32,338,000 at December 31, 1965), and the collections thereon, after certain expenses as defined, are restricted to the payment of interest and principal on the notes payable. The amended agreement provides for minimum principal payments of $2,000,000 annually through 1969 and $1,000,000 thereafter through 1972. The notes payable have been guaranteed by the parent company.

NOTE 8—LONG-TERM NOTES PAYABLE—UNSECURED: In December, 1965, the Company repaid $10,000,000 of $100,000,000 borrowed from a group of banks under a revolving credit agreement.

As a consequence of the adjustments made by the Company and its subsidiaries in 1965 (see Note 2), it became necessary to renegotiate certain of the terms and conditions of the loan agreements covering the Company's long-term indebtedness to banks and insurance companies. As a result of these negotiations, a new loan agreement was entered into in March, 1966, which, by its terms, superseded all prior agreements with the banks and insurance companies and combined the $90,000,000 balance of bank loans with $100,000,000 of insurance company loans into one loan agreement. This agreement provides for 5¾% promissory notes with principal payments ranging from $24,000,000 to $14,000,000 per year through 1975. Principal amounts of $20,000,000 are payable on December 15, 1966; in addition, the refund of Federal income taxes ($18,225,000—see Note 3) when received will be payable on the notes.

Other unsecured notes payable of $1,905,000 are outstanding. Interest rates on these notes range from 4% to 6½% with final maturities in 1981.

NOTE 9—LONG-TERM NOTES PAYABLE—SECURED: Certain plant and equipment additions have been financed by mortgage notes on the property acquired, and certain installment notes receivable and property of foreign subsidiaries have been financed by secured notes. Interest rates on these notes range from 4½% to 8½% (the latter rate being applicable to certain foreign notes), and annual principal payments through 1988 range from $137,000 to $1,770,000.

NOTE 10—DEBENTURES: The Company has outstanding $25,623,000 of 4½% convertible subordinated debentures, with annual sinking fund requirements of $1,500,000 beginning in 1971. A subsidiary has issued $5,000,000 of 5¾% collateral trust debentures, with annual sinking fund requirements of $500,000 beginning in 1969; substantially all the assets of this subsidiary have been pledged to secure these debentures.

NOTE 11—DIVIDEND AND OTHER RESTRICTIONS: The March, 1966, loan agreement with banks and insurance companies and agreements relating to the C.I.T. Corporation notes payable and the convertible subordinated debentures contain dividend, working capital, foreign in-

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Exhibit D30

vestment, net worth and various other restrictions. Cash dividends may be paid only to the extent of 25% of consolidated net income of the Company and its domestic subsidiaries, as defined, in any fiscal year, and only if various ratio, working capital and debt reduction tests have been met. As of December 31, 1965, no consolidated earnings retained in the business were available for payment of cash dividends or for acquisitions of capital stock.

NOTE 12—DEFERRED COMPENSATION: Under various employee bonus plans, additional compensation of officers and employees earned in 1962 and prior years is payable in future years in aggregate annual amounts ranging from $224,000 to $59,000. No bonus was earned under these plans in 1965.

NOTE 13—COMMON STOCK: In 1965, options for 106,000 shares were granted, under a stock option plan, at not less than the highest market price on the dates of grant, and options for 65,719 shares were canceled or expired. Options for 4,000 shares were exercised during the year. At December 31, 1965, 432,072 shares of common stock were reserved for issuance to officers and key employees under options outstanding at prices ranging from $3.30 to $57.75 per share, of which options for 227,209 shares were exercisable. All options expire within ten years or less from date of grant. The Company's stock option plans have now expired and no further options may be granted thereunder.

Under the employees' stock purchase plan (which excludes key management employees), 124,157 shares of common stock are reserved for issuance to eligible employees. In 1965, the Company granted rights and employees purchased 88,171 shares at 85% of market at dates of grant.

The Company issued 16,302 additional shares of common stock in 1965 in connection with the acquisitions of Biological Research, Inc. in 1961 and Ortho Chemical Corporation in 1962. The acquisition agreement for Ortho Chemical Corporation provides that additional shares of common stock may be issued in the years 1966-1968, depending on operating results of the successor company.

At December 31, 1965, 502,427 shares of common stock were reserved for the conversion of convertible subordinated debentures at $50.66 per share.

NOTE 14—LEGAL MATTERS: A number of lawsuits and claims are pending against the Company and its subsidiaries. Based upon the opinions of counsel as to the ultimate disposition of these matters, management believes that the liability, if any, will not be material.

The Federal Trade Commission has requested certain information concerning the Company's operation of repossessed bowling establishments throughout the country. In the opinion of counsel, these operations are lawful and not in contravention of any Federal law or regulation.

NOTE 15—LONG-TERM LEASES: As of December 31, 1965, the Company and its subsidiaries had entered into various lease agreements with terms of more than three years, which expire on various dates to 1987. Aggregate rentals are approximately $3,400,000 annually. These leases are for space in general offices, branches, factories, warehouses, service centers and certain Brunswick-operated bowling centers.

NOTE 16—UNFUNDED PAST-SERVICE COSTS: The Company and its subsidiaries maintain pension and retirement plans, which provide for retirement benefits based on service, for substantially all salaried and hourly employees. The Company is providing for the current and past-service costs of these plans based upon actuarial determinations. The unfunded past-service costs under these plans were approximately $11,000,000 at December 31, 1965.

ACCOUNTANTS' OPINION

TO THE SHAREHOLDERS AND DIRECTORS OF
BRUNSWICK CORPORATION:

We have examined the consolidated balance sheet of BRUNSWICK CORPORATION (a Delaware corporation) AND SUBSIDIARIES as of December 31, 1965, and the related consolidated statements of earnings, capital surplus and earnings retained in the business for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We had made a similar examination for the preceding year.

In our opinion, the accompanying consolidated balance sheet and consolidated statements of earnings, capital surplus and earnings retained in the business present fairly the financial position of Brunswick Corporation and Subsidiaries as of December 31, 1965, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Arthur Andersen & Co.

Chicago, Illinois, March 23, 1966.

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Exhibit D30

The 3.9-horsepower Merc-39, light in weight and easy to operate, is the ideal motor for the youngster in developing his basic outboard boating skills.

The luxurious and spacious interior of an Owens Yacht provides all the conveniences of a home afloat.

The 42′ Aruba tri-cabin motor yacht enjoyed an excellent sales year for the Owens Yacht Division.

Facilities were expanded in Covington, Georgia, to provide additional capacity for production of golf balls; and an expansion project is in progress at Torrington, Connecticut, which will double the production capacity for golf club shafts.

These measures are expected to improve the performance of the division in 1966.

OWENS YACHT

The Owens Yacht Division continued to increase its total sales volume and share of market despite stiffening competition throughout the inboard pleasure cruiser field.

The most noticeable gain for Owens was its penetration of the 30- to 42-foot boat market. Aiming much of its promotion and sales efforts toward buyers of these larger units, Owens experienced an appreciable sales gain in these longer hull lengths. The 42-foot Aruba has received outstanding acceptance as the new queen of the Owens fleet.

The research and development team at Owens is engaged in developing new products to meet increasing competition for the recreation dollar. Special attention is being given to consumer demand for easy-maintenance, new and better construction materials and modern functional designs.

Fully aware of the many trends in their industry, Owens' engineering, marketing and management personnel are taking steps to insure that the division will continue as a major inboard cruiser builder and to increase its share of the pleasure boat market.

BOWLING

The year 1965 appears to have been one of bottoming-out for the bowling industry with the number of commercial centers and bowling participants

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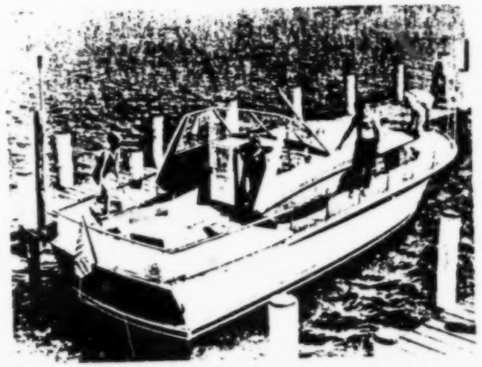

Owens' Jamaican 35' Yacht Express offers the discriminating yachtsman a beautiful pleasure craft which comfortably accommodates six people.

Brunswick has pioneered new styling trends in commercial billiard equipment, to create an aura of home in the local billiard establishment.

remaining virtually unchanged since 1964. While the general health of the industry at the operating level improved, bowling equipment sales again declined as fewer new bowling centers were constructed. The firm price and credit policies announced for capital equipment in 1964 continued to strengthen Brunswick's collection efforts.

The division maintained its share of the bowling supply and resale products market in 1965 and increased its share of the home billiard table market.

New products successfully introduced included the Edgebrook billiard table, which completed a line of home tables ranging in price from $275 to $1,095; the Trac-Master and Marion Ladewig bowling balls; and the Lustre-King bowling ball polisher.

Successfully test-marketed in 1964, the Trac-Master gave Brunswick dealers a distinct advantage over competition, and the product established itself as the number two seller in the Brunswick line, topped only by the standard medium-priced Black Beauty. Brunswick's new Lustre-King polisher, a coin-operated bowling ball cleaning and polishing unit, is the first device made available to proprietors for their customers to clean all bowling balls, regardless of material, at the same time offering a choice of cleaning cycles.

With the worldwide decline in the market for bowling capital equipment, the International Division was consolidated into the Bowling Division in 1965.

The year was one of reorganization and consolidation in the overseas markets. The growth in bowling which had been expected did not materialize. While the sale of bowling equipment in Germany and the Far East continued at satisfactory levels in 1965, the market in the United Kingdom was adversely affected by that country's balance-of-payments problems and internal credit restraints. Sales of equipment in France, Italy and other European countries continued, for various reasons, to be disappointing. Therefore, the organization has been curtailed to reduce expenses. It has been decided that for some areas it would be more profitable to market products through commission agents and distributors rather than through the Company sales organization.

On the brighter side, however, the Brunswick-operated bowling centers abroad continue in the aggregate to be profitable, and gains were registered in the overseas sales of sporting goods, marine products and school furniture.

BOWLING CENTER OPERATIONS

This division, established at the beginning of 1965, was operating 134 establishments in the United States and Canada at year-end. These centers were taken over in connection with equipment repossessions largely because of undercapitalization or poor management. The rapid expansion of these activities required a concentrated program of training managers —involving new systems of operating control, not only for bowling but also for snack bars, restaurants and cocktail lounges. Appreciable cash is now being received where little or none was previously being collected.

It is the Company's intention to develop statistical information from these operations and to make the data available to the industry.

Bowling centers operated by this division are available for sale as going businesses on sound financial terms to interested investors.

Willie Mosconi demonstrates his pocket billiard prowess on the Brunswick Monarch home table.

New design concepts in bowling and billiards are frequently tested in miniature before full-size models are constructed.

HEALTH & SCIENCE

The Health and Science Division's growth in 1965 over the previous year was attributable to the increased size of the markets it serves, coupled with the benefits being derived from the reorganization reported to you last year. The division's Monoject line of disposable hypodermic needles and syringes now ranks number one nationally in its market.

Substantial sales gains have been made in the division's line of medical and surgical tubing as well as in scientific products such as disposable laboratory ware, capillary tubing and related items. The division's products have also been introduced into the field of veterinary medicine. Initial results are most encouraging.

One of the first significant results of the combined efforts of the new research and development and marketing organizations has been the creation and introduction of the systems concept in medication and syringe dispensing. Featuring the unique Monotray, this system permits more uniform control of the distribution of both oral and injectable medication with greater safety for the patient while enabling more efficient handling by the nurse.

A major advance in cardiac surgery was announced early in 1966, as Brunsmet metallic filaments were applied as electrodes in the implantable cardiac pacemaker. Constant tension and flex on the wires exerted by continuous body motions caused electrical failure due to breakage of materials previously used. The combination of limpness, flexibility and strength made possible by 300 twisted strands of minutely-fine Brunsmet stainless steel filaments in each of two electrodes will relieve the anxieties of patients with complete heart block and Stokes-Adams disease who are depending

Supreme Court, U. S.
FILED
JAN 23 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

—v.—

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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January 22, 1976

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ARGUMENT:

I. The fact that both sides have petitioned for a writ of certiorari is a circumstance militating strongly in favor of granting an appeal on the merits 6

II. Certiorari should be granted for the considerations governing review on certiorari as formulated in plaintiffs' petition, rather than as formulated by Brunswick, since the latter set forth matters of private concern which do not rise to the dignity of the special and important reasons required by Rule 19 7

III. The "in commerce" question as posed by the plaintiffs should be accepted by the Court, since the Treadway petition satisfies Rule 19, and the formulation of the Brunswick counterpetition does not 11

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BRIEF FOR RESPONDENTS IN OPPOSITION

Questions Presented

On November 26, 1975 Treadway Companies, Inc., *et al.* (hereafter "plaintiffs" or "Treadway") filed their petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit (No. 75-770). On December 23, 1975 Brunswick Corporation filed its brief in opposition and also its own petition for a writ of certiorari (No. 75-904) based upon a different formulation of reasons for granting the writ. Brunswick's dual positions seem to be utterly inconsistent, and the reasons formulated in Brunswick's separate petition relate to the same subject matter

which plaintiffs' petition projected for this Court's consideration in somewhat different form.

It seems to us, with great respect, that the Brunswick petition should be denied out of hand, since it presents matters for determination subsumed in the issues presented by the Treadway petition. Brunswick merely uses the device of a separate petition in order to brief the case twice—first in its brief in opposition to the Treadway petition and then in its own petition. The circumstance that Brunswick wishes this Court finally to dispose of the case and to bar a new trial as ordered by the third circuit is not a ground for a separate petition which merely sets forth Brunswick's recommendations for disposition of issues already presented in the Treadway petition.

Both sides think that the case should be disposed of by this Court finally, and without a new trial. The only real difference is that Treadway seeks affirmance of the jury verdict and decision of the trial court whereas Brunswick seeks reversal of the results of both the appellate and trial court, emerging with a total victory here. Treadway urges this Court to reverse the decision of the third circuit and to re-establish the verdict of the jury in favor of the Treadway companies but, if defeated here, Treadway assumes that the Supreme Court will affirm the judgment of the third circuit providing for a remand and a new trial.

Counterstatement

Although both sides agree that this Court should grant them an opportunity to be heard on the merits, the parties are in almost total disagreement about why a writ of

certiorari should be granted. Plaintiffs' petition relied upon the far-flung importance of the two issues, of first impression for this Court, concerning standing to sue for damages and divestiture under Section 7 of the Clayton Act, as well as the widespread conflicts these issues have created among courts of appeals and with related decisions of this Court. Additionally, plaintiffs urged that the third circuit's rulings so far departed from accepted courses of judicial proceedings as urgently to require this Court's exercise of supervision.

Brunswick's petition framed much narrower reasons for granting a writ which have strayed far afield from considerations of public interest and the other criteria for granting writs set forth in this Court's Rule 19. Indeed, the obstacles to success posed by Brunswick's petition flow directly from the fact that its reasons for granting the writ, questions presented and entire underlying discussion were drafted in almost total disregard of Rule 19.

Brunswick's first question is whether "mere continued presence" should permit damage recoveries by competitors "when there is no proof that the 'acquisitions' resulted in any lessening of competition or monopoly in those markets" (p. 3). Its remaining two "questions presented" likewise are designed to create the impression that both the Brunswick and Treadway petitions merely pose questions as to the weight of the evidence which can be of no interest whatever to this Court (pp. 3-4). These "questions presented" and the briefing on evidentiary matters which follows cause Brunswick's petition to lose its credibility. The two major questions posed by plaintiffs' petition—the private right to treble damages and divestiture under Section 7—are pure

questions of law which the third circuit characterized as being "of first impression nationally" (6a), "exploring largely virgin antitrust territory" (7a), and having "far-reaching ramifications" (19a).

Brunswick sorrowfully states in its petition that there is no reason why "petitioner, or indeed, the district court [should] be burdened with an expensive retrial" (p. 37) and with "another protracted trial" (p. 38). Brunswick's attempts to show that it has been victimized by what it calls "a novel and radical theory" of Section 7 violation (p. 16) cannot obscure the true merits and importance of claims which have survived a summary judgment motion and six motions for directed verdicts or a new trial. Plaintiffs have persuaded 17 of 18 jurors and have been awarded judgments totaling approximately $7 million as well as a divestiture decree. Plaintiffs now need this Court's review of a third circuit decision which literally retried the facts of the case without giving the slightest weight to the findings of the jury and the trial court.

The reality which Brunswick seeks to push aside is that Treadway—and not Brunswick—is fighting to stay the course in a case which by now almost certainly is one of the oldest civil cases still pending in the federal courts. Treadway's present dilemma was anticipated long ago by Judge Edward Weinfeld in *United States* v. *Standard Ultramarine & Color Co.*, 137 F. Supp. 167 (S.D.N.Y. 1955). He observed that the private action was created "to encourage individuals to aid in the policing" of the antitrust laws, but the private litigation which followed showed that "this auxiliary policing method did not altogether fulfill its purpose" because small plaintiffs "able and willing to assume the staggering cost of litigation were frequently worn out by their opponents by sheer attrition" (137 F. Supp. at 171).

We urge the Court to consider the petitions in context of facts of record which are of overriding importance, rather than in light of Brunswick's interpretations of the record which are inconsistent with jury findings. The third circuit laid down principles of vast importance concerning the assessment of damages governing the first case in which damages were awarded for violation of Section 7 of the Clayton Act. In so doing, the third circuit expressly stressed the need for definitive guidance by this Court on important matters relating to the effect of the acquisition under the "in commerce" requirement of Section 7, and relating to the issues of whether the trial court correctly charged the jury on violations of Section 7 and on the proper measure of damages. The third circuit's reversal of the divestiture decree also will make this case the first case to reach the Supreme Court on a private plaintiff's right to an award of divestiture under Section 16 of the Clayton Act.

It is these broad issues which mandate certiorari and decision by this Court now in litigation which already has lasted a decade, and not the largely factual questions posed in Brunswick's petition which would ask this Court to substitute for the jury.

POINT I

The fact that both sides have petitioned for a writ of certiorari is a circumstance militating strongly in favor of granting an appeal on the merits.

We cannot endorse Brunswick's main reasons for granting its petition (Points I and II, pp. 16-27) because of the various defects hereafter described in this brief. We are firmly convinced that this Court's intervention is desperately needed here, however, irrespective of whether the eventual outcome favors plaintiffs or Brunswick. We therefore endorse the granting of the Brunswick petition if the Court simultaneously will grant plaintiffs' petition and thus permit this Court's review of the full range of the parties' contentions.

The granting of both petitions is the only disposition which will give proper weight to the circumstance that both sides have petitioned for a writ of certiorari. That circumstance demonstrates that both sides are in agreement that this ten-year litigation finally can be terminated by this Court now on the basis of facts already of record, that the litigation poses issues which have a far-flung public interest, and that a third trial will impose an unconscionable and needless burden on the trial court and the parties.

POINT II

Certiorari should be granted for the considerations governing review on certiorari as formulated in plaintiffs' petition, rather than as formulated by Brunswick, since the latter set forth matters of private concern which do not rise to the dignity of the special and important reasons required by Rule 19.

Eager as we are for this Court to grant certiorari, we think it important that certiorari not be granted for the wrong reasons or on the basis of Brunswick formulations of position which do not satisfy Rule 19 of this Court.

Brunswick gives lip service to Rule 19 when it states in its Point I heading that the third circuit's decision "presents a far reaching question of fundamental antitrust policy" (p. 16), but the briefing which follows is confined to questions concerning the weight of the evidence and supposed erroneous jury instructions. Brunswick thus has ignored the third circuit's central holding that "the district court was exploring largely virgin antitrust territory," and that the errors which it felt resulted "were committed in this new territory" (7a). The questions posed by this holding do not, as Brunswick contends, go to the weight of the evidence or to the sufficiency of jury instructions given by the seasoned Chief Justice of the District of New Jersey. No credence can be given to Brunswick's claims that the decision below "will open the floodgates for treble damage suits and windfall verdicts" (p. 25) and will result in "a complete emasculation of the views" of five other circuits (p. 24).

Since Brunswick failed to show that its reasons for granting the writ would further the public interest in private enforcement of the antitrust laws, we urge this Court to grant plaintiffs' petition to the benefit of all private antitrust litigants, whether they be plaintiffs or defendants. Plaintiffs' petition will give this Court full rein to resolve the two fundamental questions raised in this litigation of whether private plaintiffs may achieve treble damages and divestiture for violations of Section 7 of the Clayton Act. These are questions of first impression for this Court, and they are questions which have resulted in vastly conflicting decisions among both district courts and courts of appeal.

Plaintiffs' petition (Point II, pp. 16-20) demonstrated the need for a definitive Supreme Court ruling on the third circuit's holding that divestiture is no longer appropriate because eleven years (ten of which have been consumed in this litigation) have elapsed since Brunswick's acquisitions occurred (30a). This denial of divestiture totally ignored key facts of record about the continuous restrictive effect of the illegal presence of the Brunswick-acquired companies throughout the eleven years and the third circuit accepted plaintiffs' deep-pocket theory as making the acquisitions illegal (19a), apparently without recognition that the continuing illegal presence of the deep-pocket bowling centers in the competitive markets carried with it the power to fix prices and to exclude competitors such as plaintiffs.

The ultimate paradox in the third circuit's denial of divestiture is its unwarranted assumption that only upon proper proof that the acquired companies would have gone out of business but for the acquisitions would plaintiffs become entitled to recover damages for the illegal presence

of the acquired companies (19a). If the mere presence in the market is illegal and is the cause of damages flowing to the plaintiffs, then these damages inevitably must run until doomsday unless federal courts intervene to purge the illegal presence by granting divestiture.

At Point II (pp. 25-30) of its petition, Brunswick plays a word game which it has played through this litigation despite its rejection on countless occasions during extensive motion practice, two trials and the appeal to the third circuit. The trial court aptly labeled it Brunswick's "neat 'Catch-22' proposition" (41a):

> [Brunswick argues] that, because plaintiff's [sic] damage evidence was predicated on the fact that these centers would have gone out of business but for Brunswick's intervention, an admission has been made that the centers were in fact "failing companies". Much more is necessary however, for defendants' [sic] neat "Catch-22" proposition to be viable.

As the trial court recognized, Brunswick's claim of relationship between plaintiffs' theory of damages and Brunswick's "failing company" defense is pure fiction. Plaintiffs' theory of damages necessarily premised that Brunswick's illegal presence was eliminated from the market, and Brunswick could not possibly prove that there were no other potential purchasers of its acquired bowling centers. Each Brunswick acquisition commenced, irreversibly, with Brunswick's decision to foreclose on its chattel mortgages on the lanes and automatic pinsetters because its customer's credit was no longer satisfactory to Brunswick. By making that decision, Brunswick destroyed any viable alternatives for the acquired center which may otherwise have existed, and

its later acquisition of the bowling center itself with all its appurtenances was set up by the calling of the debt.

Brunswick's claim that plaintiffs' lawsuit "is in contrast with the decision of the Government" (p. 11 n.4) is another claim Brunswick repeatedly has made in this litigation even though it knows it to be false. The F.T.C. stated flatly in 1969 that the two "no action" letters which supposedly support this Brunswick claim could not "be in any sense interpreted as a determination of the issues involved in a privately litigated matter" (App. 49b).

Granting of the writ for reasons formulated by plaintiffs rather than by Brunswick will significantly further the public interest in private antitrust enforcement. Decisive rulings by this Court now on private rights to awards of treble damages and divestiture under Section 7 will greatly enhance "the public interest in vigorous enforcement of the antitrust laws through the instrumentality of private treble-damage action," *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329, 75 S. Ct. 865, 869 (1955), as well as "the overriding public policy in favor of competition" and "the usefulness of the private action as a bulwark of antitrust enforcement." *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 139, 88 S. Ct. 1981, 1984 (1968).

Conversely, denial of plaintiffs' petition will destroy "a strong and reliable motive for [private antitrust] enforcement, which relieves the Government of the cost of enforcement." *Bruce's Juices, Inc.* v. *American Can Co.*, 330 U.S. 743, 751, 67 S. Ct. 1015, 1019 (1947). It will leave undisturbed a decision which will for all practical purposes prevent private enforcement of Section 7 for years to come.

POINT III

The "in commerce" question as posed by the plaintiffs should be accepted by the Court, since the Treadway petition satisfies Rule 19, and the formulation of the Brunswick counterpetition does not.

Facts of record require us to join in Brunswick's position that the "commerce" question "is one of law which can be resolved upon a review of the record" (p. 33). We likewise endorse its position that "if the evidence is insufficient as a matter of law, the case should be dismissed" (p. 33) with the obvious proviso—omitted by Brunswick—that the ruling must be in plaintiffs' favor if the evidence is sufficient as a matter of law.

We cannot endorse the "commerce" question in the form presented in Brunswick's petition (p. 4) because it improperly asserts that plaintiffs failed "to prove that the 'acquired' companies were engaged in commerce" and then poses the inquiry, "is it not incumbent on a reviewing court to dismiss the claim" that Section 7 was thereby violated. We cannot endorse any of the remaining portions of the Brunswick petition addressed to the "commerce" issue (Point III, pp. 30-37) for similar reasons.

The vital public interest in private antitrust enforcement of Section 7 needs this Court to formulate definitive guidelines for applying the jurisdictional test of "commerce" posed by Section 7. Such definitive guidelines can be formulated with great precision in this case for the reasons framed in Treadway's petition (Point III, pp. 21-27) and in context of facts of record here. Broad guidelines could

not have been formulated in *United States* v. *American Building Maintenance Industries*, 422 U.S. 271, 95 S. Ct. 2150 (1975) because the limited facts of record there confined this Court to a ruling that the Department of Justice did not meet even the *de minimis* tests of "commerce" under Section 7. Indeed, the Government's litigation there merely was a tactical device for testing the outer jurisdictional reach of Section 7.

In addition to the interstate purchases of lanes and pinsetters and the resulting long-term interstate credit transactions with Brunswick, described in plaintiffs' petition (Point III, p. 26), numerous other facts of record make the "commerce" issue now ripe for decision because they likewise show that the Brunswick-acquired bowling centers conducted their bowling and interrelated operations in a continual flow of goods and services across state lines. For example, the Brunswick-acquired centers competitive to the Paramus (New Jersey) plaintiff made the following sizeable expenditures during 1971 and 1972 (App. 2578a-2587a; 2667a-2677a):

	Interstate Lanes		Fair Lawn Lanes	
	1971	1972	1971	1972
Pro Shop	$11,161	$11,052	$ 4,207	$ 4,939
Repair and Maintenance	9,111	19,081	10,228	10,175
Operating Supplies	7,256	10,406	2,845	8,982
Total Bowling	$27,528	$40,539	$17,208	$24,096
Bar, Restaurant, Snack Bar	46,344	47,892	23,660	25,247
Overall Totals	$73,872	$88,431	$40,868	$49,343

Expenditures of comparable size and frequency were made by all the Brunswick-acquired bowling centers, and virtually all of the underlying transactions were across state lines. Thus the bowling-center operations of the Brunswick-acquired companies clearly are comparable to the kinds of business activities which led this Court to conclude in *American Building Maintenance Industries* that it was "unquestionable" that the defendant there "was and is actively engaged in interstate commerce" (422 U.S. at 275, 95 S. Ct. at 2153). Conversely, the bowling-center operations are in no way comparable to the business activities of the two acquired companies there which made their yearly purchases of janitorial equipment and supplies almost exclusively "in intrastate transactions from local distributors" rather than "directly from suppliers in other states" (422 U.S. at 285, 95 S. Ct. at 2158-2159). There is no support in the record for Brunswick's claims that these bowling-center operations are "clearly a wholly intrastate activity which does not satisfy the interstate commerce requirements of the antitrust laws" (p. 31) and which at most involve purchases of "some incidental supplies from outside the state" (p. 32).

The happenstance that this Court decided *American Building Maintenance Industries* over two years after the trial court instructed the jury in the case at bar, however, does pose the important issue of what weight should attach to higher court decisions on antitrust matters rendered after the district court has formulated jury instructions and otherwise disposed of all legal issues in the light of then-existing case precedents. Without applying any concept of retroactivity, we submit that economies of judicial time and considerations of basic fairness virtually compel the conclusion that very little weight should attach to such rulings if "manifest injustice" otherwise would result.

Bradley v. *School Board of City of Richmond*, 416 U.S. 696, 711, 94 S. Ct. 2006, 2016 (1974).

Plaintiffs have more than met the long-standing Section 7 commerce tests which merely were reaffirmed in *American Building Maintenance Industries*. That case did not pose a "new and more stringent jurisdictional test" as the third circuit erroneously supposed (16a). It therefore is enough that facts already of record show that plaintiffs far exceeded the *de minimis* tests posed there, and the issue of "retroactivity" or similar equitable considerations need not be reached by the Court.

CONCLUSION

This is a unique case in which plaintiffs and their counsel steadfastly have maintained their positions through two lengthy trials consuming 59 trial days. The issues are ripe for decision now, and we think the public interest in private antitrust enforcement will be best served if plaintiffs' petition is granted and no further years are added to the count of this interminable litigation.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

—

OCTOBER TERM, 1975.

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No. 75-904.

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BRUNSWICK CORPORATION,
Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
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AND HOLIDAY BOWL-O-MAT, INC.,
Respondents.

—

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. pp. 1a-32a) is reported at 523 F. 2d 262 (3d Cir. 1975). The opinions of the United States District Court for the District of New Jersey (Pet. App. pp. 33a-60a) are reported at 364 F. Supp. 316 (D. N. J. 1973) and 389 F. Supp. 996 (D. N. J. 1974).

JURISDICTION.

The judgment of the Court of Appeals was entered on August 29, 1975. On November 5, 1975, Mr. Justice Brennan extended petitioner's time for filing a petition for writ of certiorari to and including December 27, 1975 (No. A-421). The petition for writ of certiorari was filed on December 24, 1975 and was granted by this Court on February 23, 1976.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). Jurisdiction in the District Court was based on 15 U. S. C. §§ 15 and 26.

QUESTIONS PRESENTED.

1. Does the mere continued presence in certain local markets of retail establishments allegedly "acquired" by a "deep pocket" manufacturer in violation of Section 7 of the Clayton Act afford a basis for competing retailers to recover damages under Section 4 of the Clayton Act when there is no proof that the "acquisitions" resulted in any lessening of competition or monopoly in those markets?

2. Does not the "failing company" principle require dismissal of a treble-damage action based on alleged violations of Section 7 of the Clayton Act where the plaintiffs' entire damage theory is based on the premise that the "acquired" businesses would have failed and disappeared from the market had the defendant not kept them alive by making the challenged "acquisitions"?

STATUTES INVOLVED.

The first paragraph of Section 7 of the Clayton Act, 15 U. S. C. § 18, provides:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." [1]

Section 4 of the Clayton Act, 15 U. S. C. § 15, provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

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1. The complaint (A10-A28) charged petitioner with violations of Sections 1 and 2 of the Sherman Act, 15 U. S. C. §§ 1 and 2, as well as with violations of Section 7 of the Clayton Act, 15 U. S. C. § 18. The Section 1 count was withdrawn prior to trial (A1548) and the jury rendered a verdict in petitioner's favor on the Section 2 count (A1543) and respondents did not appeal therefrom. Accordingly, Sections 1 and 2 of the Sherman Act are no longer statutes involved in this case.

STATEMENT.

In the words of the Court of Appeals, this is a case "of first impression nationally" (Pet. App. p. 6a) and explores "largely virgin antitrust territory" (Pet. App. p. 7a). The District Court entered in favor of respondents the first judgments for treble damages ever awarded by reason of claimed violations of Section 7 of the Clayton Act, and did this in the face of a jury verdict that petitioner had neither monopolized nor attempted to monopolize the relevant markets and in the absence of evidence that competition in these markets had been lessened or restrained.

In claiming injury and damage, respondents did not rely upon any claimed monopolization or lessening of competition. Rather, respondents' claims of injury and damage are based wholly upon the novel contention that the mere continued presence in the market of formerly failing businesses which were taken over and restored to viability by petitioner was illegal and that such allegedly illegal presence entitles respondents, who are competitors of the rescued businesses, to a recovery of damages. Respondents measure the "damages" to which they claim to be entitled by the estimated profits which they would have earned if the failing businesses had disappeared from the market, which respondents assert would have occurred if petitioner had not taken over the operation of such businesses. In essence, respondents' theory of injury and damage is based upon the fact that competition was not lessened but was preserved and continued, and the "damages" claimed by respondents are the normal business consequence of having competitors.

The Court of Appeals reversed the judgments and remanded the case for a new trial because of errors in the District Court's instructions to the jury, but the Court of

Appeals explicitly approved respondents' "unlawful presence" theory of injury and damage. That theory, which, in the words of the Court of Appeals, "obviously has far-reaching ramifications" (Pet. App. p. 19a), is now before this Court for review.

Also before this Court for review is an important question of law concerning the interaction between the principle which insulates the acquisition of a "failing company" from the prohibitions of Section 7 of the Clayton Act and the requirement of Section 4 of that Act that a treble-damage plaintiff must prove injury to its business or property by reason of something forbidden by the antitrust laws. Although the Court of Appeals recognized that, as an essential element of their attempted proof of injury and damage, respondents had the burden of proving that the businesses taken over by petitioner would have failed and disappeared from the market had petitioner not continued their operation, the court failed to recognize that such proof by respondents also would establish petitioner's "failing company" defense, requiring that the case be dismissed.

A. Background.

The significant antitrust issues involved in this case arise in the framework of the recreational bowling industry. Petitioner, Brunswick Corporation, had been a major manufacturer of bowling equipment.[2] Respondents (Pueblo Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations and Holiday Bowl-O-Mat, Inc.) are three subsidiaries of Treadway Companies, Inc. which, through its subsidiaries, operates a number of bowling centers

2. Since 1963 there has been very little manufacture of bowling equipment (A1032-A1033, A1866).

throughout the United States (A56-A58).[3] Respondents operate bowling centers in Pueblo, Colorado; in Paramus, New Jersey; and near Poughkeepsie, New York.

In the past twenty years, the industry experienced a period of marked prosperity (the latter 1950's), followed by a period of serious decline (the 1960's), and, more recently, by a period of general improvement (the 1970's) (A61-A62, A70-A71, A357-A358, A548-A551, A650-A652, A1187).

The industry was in its infancy until the mid-1950's when the introduction of automatic pinsetting machines revolutionized the industry and bowling increased in popularity. With the introduction of this modernized equipment, local bowling centers thrived and new bowling centers sprang up everywhere. During this period of growth petitioner sold large quantities of automatic pinsetters and bowling lanes to operators of local bowling centers (A548-A550, A1025-A1032).[4]

However, because the initial outfitting of a bowling center involves a substantial capital investment, petitioner was not able to sell its pinsetters and lanes for cash, but instead accepted installment paper pursuant to which the bowling center operator made an initial down payment in cash and agreed to pay the major portion of the purchase

3. This action was instituted by Treadway Companies, Inc. (formerly known as "National Bowl-O-Mat Corporation") and ten of its wholly-owned subsidiaries. However, respondents were the only plaintiffs in whose favor a judgment was rendered (A1546-A1549, A1560-A1561).

4. From 1956 through 1960, petitioner's sales of new pinsetters were as follows (A881, A1866):

Year	*Quantity*
1956	1,890
1957	7,041
1958	10,528
1959	12,876
1960	15,232

price in installments over a period of years. Under the conditional sales agreements entered into by petitioner and bowling center operators, petitioner retained a security interest in the equipment which it sold on the installment plan. While petitioner had no difficulty collecting the installment payments during the boom period of the 1950's, the early 1960's brought about a complete reversal. The bowling industry went into a sharp decline and petitioner ran into a nightmare of collection problems and hopeless defaults (A1028-A1039).[5] The Court of Appeals, in its opinion below, accurately summarizes the situation as follows (Pet. App. pp. 7a-8a):

5. From 1961 through 1972, petitioner's sales of new pinsetters were as follows (A881-A882, A1866):

Year	*Quantity*
1961	16,288
1962	7,518
1963	2,978
1964	1,441
1965	659
1966	244
1967	295
1968	112
1969	118
1970	173
1971	72
1972	1,048

During that same period, petitioner's repossessions of pinsetters were as follows (A882, A1037, A1866):

Year	*Quantity*
1961	300
1962	1,462
1963	3,354
1964	4,592
1965	5,996
1966	3,658
1967	1,688
1968	716
1969	783
1970	290
1971	116
1972	50

"Simultaneously with the decline in the industry there occurred a collection problem. Defaults on equipment loans became commonplace. Numerous bowling center proprietors were in such hopeless financial straits that it became clear that there was no reasonable prospect of payment. Exercising its chattel security rights, Brunswick made numerous repossessions, and attempted to dispose of the repossessed equipment at discount prices. Such sales, however, did not keep pace with repossessions. Brunswick's efforts to lease repossessed lanes to new independent proprietors proved unsuccessful. Over the years Brunswick had borrowed close to $300 million in order to finance the manufacture and sale of bowling equipment. By late 1964 its receivables were in excess of $400 million of which more than $100 million dollars were over 90 days delinquent. Brunswick was clearly in serious financial difficulty.

"In an effort to reverse its deteriorating condition, Brunswick's management decided on a plan. In those cases in which attempts to collect receivables failed, it would repossess the equipment and attempt to sell it in place to third parties. If no sale could be effected Brunswick would then consider operating the failing centers itself if there appeared to be any reasonable prospect that a positive cash flow would result.

"In January 1965 Brunswick formed a Bowling Center Operations Division (BCOD) charged with the responsibility of evaluating centers and operating those which could produce a positive cash flow. This development was disclosed by Brunswick's president to a meeting of the Bowling Proprietors Association, a retail level trade group, in 1965.

"Between 1965 and 1972 BCOD evaluated over 600 defaulting centers for possible operation, commenced operating 222 of these, disposed of 11 to third parties, and closed 43 which proved unable to develop a positive cash flow. The highest number operated by Brunswick at any one time was 169. The largest number of centers taken over by Brunswick for operation in any year was 124 in 1965. Of these, centers in three areas are the subject of this appeal. They are Dutchess Lanes in Poughkeepsie, New York, Belmont Lanes in Pueblo, Colorado, and Fair Lawn Lanes, Interstate Lanes, Ten-Pin-on-the-Mall and Lodi Lanes in or near Paramus, New Jersey.

"In each of the local retail market areas a Treadway subsidiary operated a bowling center competing for retail customers with the bowling centers taken over by Brunswick. . . ."[6]

B. Poughkeepsie, New York.

In 1965, petitioner repossessed the pinsetters and lanes at a defaulting 26-lane bowling center (Dutchess Lanes) in Poughkeepsie, New York, leased the premises and began operating that center. Under petitioner's operation, Dutchess Lanes failed to develop a positive cash flow and petitioner discontinued the operation in 1969, removing its bowling equipment. At the time petitioner commenced operating Dutchess Lanes in 1965, there were five other bowling centers in the Poughkeepsie area including a 36-lane center operated by respondent Holiday Bowl-O-Mat,

6. For record support for the Court of Appeals' summarization of the situation, see A1031-A1046, A1056, A1099, A1363-A1370, A1384-A1386, A1394-A1399, A1881 and A1884.

In 1972, there were a total of 8,818 bowling centers in the United States of which petitioner operated 168 (A1096), less than 2% of the total.

Inc. Each of the five centers continued to operate throughout the period of petitioner's operation of Dutchess Lanes and each was still operating at the time of trial (A185-A189, A201, A395-A396, A428-A429, A432-A433, A1078-A1079, A1125-A1127, A1609).

The Poughkeepsie bowling market was highly competitive prior to petitioner's operation of Dutchess Lanes (A197, A1610), and this competition did not lessen during the period of petitioner's operation. Indeed, to the contrary, two of the other bowling centers in the Poughkeepsie market expanded their facilities during the period when petitioner was operating Dutchess Lanes (A432-A433, A1126). Adding new lanes increased competition for the local bowlers' patronage, as respondents' president testified (A432-A433); he further testified that petitioner's closing of Dutchess Lanes in 1969 caused "lessening" of competition (A436).

Respondents made no attempt to particularize or measure any loss of business to Holiday Bowl-O-Mat resulting from the manner in which petitioner operated Dutchess Lanes or to show how Holiday Bowl-O-Mat might have been affected had Dutchess Lanes been operated by someone other than petitioner. Rather, respondents directed their damage claim to the propositions that Holiday Bowl-O-Mat had been harmed by petitioner's "just keeping it [Dutchess Lanes] alive" (A433) and that Holiday Bowl-O-Mat was entitled to have achieved annual earnings throughout the 1965-69 period equal to those it ultimately enjoyed after there was "a lessening of the competition in the area with Dutchess closed" (A436). Holiday Bowl-O-Mat's claimed measure of "damage" was the estimated profit from additional bowling patronage that would have come its way if Dutchess Lanes had been closed in 1965 rather than four years later (A396-A399).

C. Pueblo, Colorado.

Petitioner repossessed the bowling equipment at a defaulting 24-lane bowling center in Pueblo, Colorado (Belmont Lanes), leased the premises and began operating that center in 1965. There were four bowling centers in Pueblo, Colorado operated by others at the time, including a 40-lane center operated by respondent Pueblo Bowl-O-Mat, Inc. Each of these centers continued to operate throughout the period involved in this case (A122, A165, A446, A502-A503, A1078).

Like its sister corporation in the Poughkeepsie area, Pueblo Bowl-O-Mat took the position that petitioner had wronged it by "keeping alive the center which we think should not be in business" (A377) and that petitioner had injured Pueblo Bowl-O-Mat by "taking over Belmont Lanes and operating it directly competitively to our center" (A366). The claimed "damages" consisted of the estimated additional income Pueblo Bowl-O-Mat would have enjoyed had Belmont Lanes been closed in 1965 instead of being continued by petitioner (A377-A378, A511-A513).

D. Paramus, New Jersey.

In 1965, petitioner was also confronted by defaults in equipment payments by the bankrupt American International Bowling Corporation ("AIBC") and its subsidiaries (each of which operated a local bowling center). AIBC and its subsidiaries owed in excess of $10 million to petitioner and petitioner purchased the capital stock of a number of AIBC subsidiaries at the AIBC bankruptcy sale. Included among the AIBC subsidiaries whose stock was purchased by petitioner were two companies operating bowling centers in the general vicinity of Paramus, New Jersey—Fair Lawn Lanes in Fair Lawn, New Jersey and Interstate Lanes in Ramsey, New Jersey. Petitioner began

operating these two bowling centers in March 1965 (A249-A252, A1287-A1288, A1325).

In September 1969, petitioner repossessed the bowling equipment at Ten-Pin-on-the-Mall in Paramus, New Jersey, obtained a lease of the premises, and took over and continued the operations of that bowling center. Beginning in 1970, petitioner operated Lodi Lanes in Lodi, New Jersey under a lease of the equipment and premises which expired in 1973 (A1128, A1850-A1863).[7]

Respondent Bowl-O-Mat Paramus Operations is the operator of a bowling center in Paramus, New Jersey which respondents' witnesses said was in competition with all four of these centers—Fair Lawn, Interstate, Ten-Pin and Lodi—as well as with a number of other bowling centers in the northern New Jersey area (A209-A214, A1626).[8] All of these centers continued to operate throughout the period involved in this case.

As with respect to Poughkeepsie and Pueblo, no attempt was made by respondents to prove damages in Paramus resulting from the manner in which petitioner operated Fair Lawn, Interstate, Ten-Pin and Lodi, and no

7. Because the lessors were two individuals, and not a corporation, petitioner's operation of Lodi Lanes is irrelevant to respondents' claims under Section 7 of the Clayton Act which, by its express terms, applies only to acquisitions by one corporation of stock or assets "of another corporation." Section 7 does not reach an acquisition of partnership assets. **United States v. American Building Maintenance Industries,** 422 U. S. 271, 279 (1975).

8. Respondents' president asserted that there were eleven bowling centers (including Fair Lawn, Interstate, Ten-Pin and Lodi) with a total of 384 lanes in the competitive market in which Bowl-O-Mat Paramus Operations operated (A212-A214, A225-A226, A235, A1626). This assertion was disputed by one of petitioner's witnesses who demonstrated that Interstate is located approximately 12 miles from Bowl-O-Mat Paramus Operations and that there were 36 bowling centers (943 lanes) within a 12 mile radius of Bowl-O-Mat Paramus Operations. Twenty-two of the centers (580 lanes) were within five miles of Bowl-O-Mat Paramus Operations (A1279-A1287).

evidence was offered as to how Bowl-O-Mat Paramus Operations might have fared had the four centers, or any of them, been operated by someone other than petitioner. As they had done in connection with the other markets involved in this case, respondents' witnesses took the position that petitioner's sin was in taking over the operation of the centers and keeping them alive and that Bowl-O-Mat Paramus Operations was entitled to recover as "damages" the estimated additional income it would have obtained had the centers operated by petitioner been closed (A399-A404, A571).

E. The Trial.

Claiming that petitioner's taking over and continuing the operation of bowling centers violated Section 2 of the Sherman Act ("monopolization" and "attempt to monopolize") and Section 7 of the Clayton Act ("acquisitions" whose effect "may be substantially to lessen competition, or to tend to create a monopoly"), respondents (and their parent and sister corporations) brought suit against petitioner seeking money damages under Section 4 of the Clayton Act and equitable relief under Section 16 of the Clayton Act.[9] A lengthy jury trial ensued in the United States District Court for the District of New Jersey.

There was no evidence whatever at the trial that competition among bowling centers in the Poughkeepsie, Pueblo and Paramus areas was lessened in any degree (let alone "substantially") by reason of petitioner's taking over

9. The lawsuit filed by respondents is in sharp contrast with the action of the Federal Trade Commission, which commenced an investigation into petitioner's alleged antitrust violations in "acquiring" and operating bowling centers and concluded its investigation in 1968 with a decision to take no action. (The Federal Trade Commission decision is referred to in correspondence attached as Exhibits B, C and D to the August 28, 1973 affidavit of Malcolm A. Hoffmann, Esquire, submitted in support of respondents' application for attorneys' fees.)

or operating any bowling center, nor was there any showing that any of the "acquired" [10] centers achieved a greater share of the bowling patronage in its market after petitioner began operating it than the center had obtained under its prior operator. As the Court of Appeals pointed out, petitioner's entry into the picture "only acted as a substitution of competitors" (Pet. App. p. 22a).

Throughout the trial respondents took the position that petitioner had violated the law in taking over the centers and keeping them in business, that respondents (as competitors of the centers) were "injured" by the mere continued presence in the markets of the centers operated by petitioner, and that, therefore, respondents were entitled to recover as "damages" the difference between what their bowling centers actually earned and what those centers would have earned had the "acquired" centers disappeared from the market (A366-A367, A377-A404, A511-A513, A565-A566, A571, A586, A852-855).

10. Quotation marks have been placed around the words "acquire", "acquired", "acquiring" and "acquisition" wherever they appear in this brief with reference to petitioner's taking over the operation of bowling centers. Petitioner's position is that there were no "acquisitions" in this case within the meaning of Section 7 of the Clayton Act.

The legislative history of the 1950 amendments to Section 7 evidences a Congressional intention that Section 7 should not apply to purchases made at bankruptcy sales. H. R. Rep. No. 1191, 81st Cong., 1st Sess. at p. 6 (1949) and S. Rep. No. 1775, 81st Cong., 2nd Sess. at p. 7 (1950).

When petitioner reluctantly exercised its rights as a secured creditor to repossess bowling equipment from a bowling center it did not thereby obtain a bowling center or a business, but only fungible items of equipment which were in great oversupply in the market and in petitioner's warehouses. Calling such repossessions "acquisitions" does not make them the kind of transactions with which Congress was concerned when it enacted Section 7 in 1914 or when it amended the Section in 1950. *Cf.* **Brown Shoe Co. v. United States**, 370 U. S. 294, 311-323 (1962). There is no reason to believe that Section 7 was intended to limit the security rights of vendors of chattels.

No attempt was made by respondents to dispute petitioner's evidence that it never had repossessed the equipment of a bowling center which was not hopelessly insolvent and had no reasonable prospect of ever being able to pay its debts. Indeed, respondents' entire damage theory is predicated upon the assumption that, but for petitioner, the centers taken over and operated by petitioner would have failed and disappeared from the market. Respondents have so stated in this Court.[11]

At the conclusion of the trial, the jury returned verdicts (A1543) finding **for**• petitioner on the claims of monopolization and attempted monopolization under Section 2 of the Sherman Act, and **against** petitioner on the claims under Section 7 of the Clayton Act. The jury awarded damages to respondents in amounts equal to the additional profits that respondents' witnesses estimated respondents' bowling centers would have earned over the years if each of the centers taken over and operated by petitioner had gone out of existence on the day petitioner commenced operating it (A1737).

F. The Court of Appeals Decision.

After its motion for judgments notwithstanding the verdict and, in the alternative, for a new trial (A1550-A1559) was denied (Pet. App. pp. 33a-49a), petitioner appealed to the United States Court of Appeals for the Third Circuit (A1562).[12] In an opinion with far-ranging implications, the

11. Petition for certiorari in **Treadway Companies, Inc. et al. v. Brunswick Corporation** (October Term 1975, No. 75-770), pp. 13-14.

• Wherever boldface is used in this brief, the emphasis is ours.

12. Petitioner's initial appeal was dismissed (after oral argument on the merits) as being from a non-final order (A1563-A1566). The District Court then certified its order under Rule 54(b) of the Federal Rules of Civil Procedure (A1567-A1570) and petitioner again appealed (A1571). Subsequently the District Court entered

Court of Appeals reversed and ordered a new trial, holding that the case had been submitted to the jury on erroneous instructions as to both liability and damages, but refused to order the entry of judgment for petitioner as a matter of law (Pet. App. pp. 1a-32a).[13]

The Court of Appeals held that a properly instructed jury could have found that petitioner had violated Section 7 of the Clayton Act (Pet. App. pp. 10a-14a). The court asserted that "in some industries the acquisition of a competitor by a deep pocket parent can have sufficient potential to harm horizontal competitors so as to violate § 7" and that "there was sufficient evidence of such potential here to submit the case to the jury on the issue of effect on competitors" (Pet. App. p. 14a).[14]

12. (Cont'd.)
a final judgment on the equity side of the case (Pet. App. pp. 50a-60a) and petitioner appealed from that as well (A1572).

Respondents did not appeal from the judgments against them on their Section 2 claims.

13. The Court of Appeals held that the charge to the jury on the Section 7 violation issue was "virtually a directed verdict" against petitioner (Pet. App. p. 21a) and had improperly emphasized the market shares of the centers taken over and operated by petitioner to the exclusion of other factors which the jury should have considered (Pet. App. pp. 21a-22a). The court further held that the charge to the jury on the question of damages had effectively relieved respondents of the burden of proving injury to their business or property proximately related to the alleged Section 7 violations (Pet. App. p. 26a) and had improperly instructed the jury to find damages within the range claimed by respondents (Pet. App. p. 27a).

The decision of the Court of Appeals to order a new trial rather than to affirm the judgments in respondents' favor was the subject of the petition for certiorari in **Treadway Companies, Inc. et al. v. Brunswick Corporation,** October Term 1975, No. 75-770.

14. Petitioner continues to believe that this holding of the Court of Appeals was erroneous. Petitioner does not argue this contention in the present brief, however, because it believes it to be irrelevant to both of the questions which this Court has concluded to review.

Whether or not petitioner had a "deep pocket" and whether or not by reason thereof its "acquisition" and operation of bowling

The Court of Appeals also held that respondents could get their case to a properly instructed jury without showing any lessening of competition. According to the Court of Appeals, "a horizontal competitor of a company acquired by a deep pocket parent in violation of § 7 can recover damages under § 4 if it shows injury in fact causally related to the violator's presence in the market, whether or not that injury flows from or results in an actual lessening of competition" (Pet. App. p. 19a).

Additionally, the Court of Appeals held that respondents could get their case to a jury even though the entire basis for their claims of injury and damage was the premise that, had it not been for petitioner taking over and operating the bowling centers involved in this case, those centers would have failed and disappeared from the market (Pet. App. pp. 25a-27a), a premise which appears to fly in the teeth of the doctrine which insulates the acquisition of "failing companies" from the proscriptions of Section 7.

The Court of Appeals was of the opinion, however, that respondents had failed to prove that, but for petitioner's taking over and operating the bowling centers

14. (Cont'd.)
centers had a potential to harm horizontal competitors are questions relevant only to the issue of whether or not Section 7 was violated, and not to the questions presented to this Court.

The first question presented in this case assumes, *arguendo,* that a Section 7 violation might be found. The question is whether, absent a substantial lessening of competition or monopoly, the mere continued presence of the "acquired" centers in the marketplace can afford a basis for competing centers to recover damages under Section 4 of the Clayton Act.

The second question presented to this Court involves the interaction between the "failing company" doctrine and the requirement of Section 4 that a treble-damage plaintiff prove injury to its business or property by reason of something forbidden by the antitrust laws. This too is wholly unrelated to the question of whether petitioner's "acquisitions" had a potential to harm horizontal competitors.

in question, the centers would have failed and gone out of business. Although this meant that respondents had failed to prove a fact which was an essential element of their only attempted proof of injury and damages, the Court of Appeals did not order judgment for petitioner but instead remanded the case to the District Court for a new trial.

The Court of Appeals observed that petitioner had the burden of proving its defense that the centers taken over and operated by it were "failing companies" (Pet. App. pp. 26a-27a). The Court failed to recognize, however, the inescapable conclusion that if respondents should prove, in a new trial, that the bowling centers in question would have failed and disappeared had petitioner not taken over their operation, respondents could not avoid having proved petitioner's "failing company" defense, whereas if respondents should not be able to make such proof they would have failed to prove any injury or damage. In either event dismissal of the case would be required. Under the rulings of the Court of Appeals, a new trial would appear to be an exercise in futility.

SUMMARY OF ARGUMENT.

1. Section 4 of the Clayton Act permits treble damage recovery by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws." Typically, that Section is invoked in private actions brought to recover damages for alleged violations of the provisions of the antitrust laws which deal with **actual** restraints of trade, *i.e.* Sections 1 and 2 of the Sherman Act.[15]

Unlike Sections 1 and 2 of the Sherman Act, Section 7 of the Clayton Act deals with incipiencies only. Section 7 prohibits acquisitions whose effect "**may be** substantially to lessen competition, or to **tend** to create a monopoly." Since Section 7 proscribes acquisitions which "may" lead to specified anticompetitive consequences while Section 4 provides for recovery only by persons who in fact have been injured by antitrust violations, there appears to be a fundamental incongruity in basing a damage action under Section 4 on a Section 7 violation. On this basis, a number of courts have held that a private plaintiff can never predicate a Section 4 claim for money damages on a violation of Section 7. On the other hand, a number of other courts, led by the Second Circuit in **Gottesman v. General Motors Corporation,** 414 F. 2d 956 (2d Cir. 1969), have held that there can be private damage recovery under Section 4 if the threatened restraint of trade which renders an acquisition violative of Section 7 ripens into reality and causes injury.

If a private action for damages based on a violation of Section 7 is to be allowed, it would seem to be axiomatic

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15. There was no Sherman Act violation in the instant case, respondents having withdrawn their Section 1 claim (A1548) and the jury having found against them on their Section 2 claim (A1543).

that the "injury" to the private plaintiff that must be shown is injury flowing from an actual lessening of competition or a monopoly, the evils which Section 7 was designed to prevent. Numerous Section 7 cases have recognized this principle. In the instant case, however, the Court of Appeals for the Third Circuit rejected this concept and held that a competitor of a company allegedly acquired in violation of Section 7 may recover damages under Section 4 merely by showing "injury in fact causally related to the violator's presence in the market, whether or not that injury flows from or results in an actual lessening of competition." This holding is patently erroneous. Section 4 of the Clayton Act was not enacted for the purpose of enabling business enterprises to obtain windfall verdicts but to compensate those who can demonstrate that they have been injured in their business or property by reason of anticompetitive activities forbidden by the antitrust laws. Whatever its potentiality may be, an acquisition that has not, in fact, resulted in a substantial lessening of competition or a monopoly generates no anticompetitive consequences. The mere continued presence in the marketplace of a business enterprise allegedly "acquired" in violation of Section 7 cannot give rise to compensable "damages" under the antitrust laws.

2. Ever since **International Shoe Co. v. FTC**, 280 U. S. 291 (1930), it has been firmly established that an acquisition of a business enterprise is immune from challenge under Section 7 of the Clayton Act where the financial condition and resources of the acquired company are so dire that it faces the grave possibility of business failure and there are no prospective purchasers other than the acquiring company. This "failing company" doctrine stems from a policy determination, made by both the Congress and this Court, that it is more important to preserve competition by assuring the continued existence of a competitive entity than it is to eliminate the possible anticompetitive effects of the acquisition. In the instant case, respondents' entire theory of injury and damage was based on the premise that, had petitioner not taken over the "acquired" bowling centers and continued their operations, they would have gone out of business and disappeared from the marketplace. But if the bowling centers would have failed and gone out of business had it not been for petitioner's keeping them open and viable as competitors, the centers necessarily were "failing companies" and, therefore, their "acquisition" did not violate Section 7. Contrariwise, if the bowling centers would not have gone out of business, the necessary premise for respondents' only claims of injury and damage is missing. In either event, respondents' case must fail and petitioner is entitled to judgment as a matter of law.

Argument.

I.

TREBLE DAMAGE RECOVERY MAY NOT BE HAD FOR LOSS OF PROFITS ATTRIBUTED TO THE MERE CONTINUED PRESENCE IN THE MARKET OF A COMPETITOR ALLEGEDLY ACQUIRED IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT WHEN THERE IS NO PROOF THAT THE "ACQUISITION" RESULTED IN A SUBSTANTIAL LESSENING OF COMPETITION OR MONOPOLY.

As the Court of Appeals put it, "the antitrust questions arise because of the unique interaction among the Clayton Act § 7 . . . and the private remedy provisions of § 4 and § 16 of the same act" (Pet. App. p. 6a).

Section 4 of the Clayton Act, 15 U. S. C. § 15, provides:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Section 4 typically is invoked in private actions brought to recover damages for alleged violations of Sections 1 and 2 of the Sherman Act. Since Section 1 of the Sherman Act, 15 U. S. C. § 1, prohibits "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce", one who has been injured in his business or property by reason of such a restraint has a claim for damages under Section 4 of the Clayton Act. Similarly, since Section 2 of the Sherman Act makes it unlawful for anyone to "monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize any part of the trade or commerce," Section 4 of the Clayton Act permits one who has been injured by a monopolization or attempted monopolization to sue for the damages he has sustained.

Section 7 of the Clayton Act, 15 U. S. C. § 18, stands on a different footing. As the Court of Appeals recognized, Section 7 is "a statutory prohibition aimed neither at existing conspiracies nor restraints, nor at existing or attempted monopolizations, but at incipient tendencies" (Pet. App. p. 6a). Section 7 provides in pertinent part:

> "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or . . . assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

This Court has pointed out on a number of occasions that the purpose of Section 7 is preventive in nature. Section 7 "was intended to arrest the anticompetitive effects of market power in their incipiency";[16] "to arrest apprehended consequences of intercorporate relationships before those relationships could work their evil."[17] Courts were given power "to arrest restraints of trade in their incipiency and before they develop into full-fledged restraints violative of the Sherman Act."[18] Congress' "concern was with probabilities, not certainties. Statutes existed for dealing with clear-cut menaces to competition."[19] The design of

16. **FTC v. Procter & Gamble Co.**, 386 U. S. 568, 577 (1967).

17. **United States v. E. I. duPont de Nemours & Co.**, 353 U. S. 586, 597 (1957).

18. **Brown Shoe Co. v. United States**, 370 U. S. 294, 323 n. 39 (1962) (quoting from the legislative history).

19. *Id.* at 323.

Section 7 was to stop the harm before it occurred. "Mergers with a probable anticompetitive effect were to be proscribed by this Act." [20] "The test of a violation of § 7 is whether, at the time of suit, there is a reasonable probability that the acquisition is likely to result in the condemned restraints." [21]

Because Section 7 proscribes acquisitions which "may" lead to specified anticompetitive consequences while Section 4 permits recovery by "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws," there appears to be a fundamental incongruity in basing a Section 4 action on a Section 7 violation. Since "a reasonable probability" may or may not ripen into a future actuality, how can it cause injury before it ripens? How can one "be injured in his business or property by reason of" a restraint of trade that is only threatened or potential? Unable to find a satisfactory answer to these questions, a number of district courts held in the 1960's that a private plaintiff could not predicate a Section 4 claim for money damages on a violation of Section 7. See **Gottesman v. General Motors Corporation,** 221 F. Supp. 488, 493 (S. D. N. Y. 1963); **Bailey's Bakery, Ltd. v. Continental Baking Co.,** 235 F. Supp. 705, 716-717 (D. Hawaii 1964), *aff'd per curiam,* 401 F. 2d 182 (9th Cir. 1968), *cert. denied,* 393 U. S. 1086 (1969); **Highland Supply Corp. v. Reynolds Metals Co.,** 245 F. Supp. 510, 512-514 (E. D. Mo. 1965); **Isidor Weinstein Investment Co. v. Hearst Corp.,** 303 F. Supp. 646, 650 (N. D. Cal. 1969).

In **Gottesman v. General Motors Corporation,** 414 F. 2d 956, 961 (2d Cir. 1969), the Court of Appeals for the Second Circuit took a different approach. In that case, a

20. *Ibid.*

21. **United States v. E. I. duPont de Nemours & Co.,** 353 U. S. at 607.

General Motors stockholder brought a derivative action against duPont as an aftermath of the Government case in which this Court had held that duPont's acquisition of a substantial stock ownership in General Motors constituted a "potential" restraint of trade. **United States v. E. I. duPont de Nemours & Co.,** 353 U. S. 586 (1957). The stockholder claimed that, because of the stock ownership, duPont had caused General Motors to purchase paints and fabrics from duPont at higher prices than could have been obtained from other sources. In a pretrial ruling, the district court dismissed the claim, holding that there could be no private damage recovery for a Section 7 violation (221 F. Supp. 488), but the court of appeals reversed and remanded, saying (414 F. 2d at 961):

> ". . . The basis of the pre-trial ruling was that a section 7 violation can cause no damage because it establishes only that harm was threatened, not that it occurred. But if the threat ripens into reality we do not see why there can never be a private cause of action for damages. If section 7 is designed to prevent acquisitions that 'may' or 'tend to' cause specified harm, such an acquisition may either itself directly bring about the harm or make possible acts that do. We do not say that a section 7 violation must, or even probably will, have that result; but that it may and that plaintiffs should have a chance to prove injury 'by reason of' the violation are persuasive propositions. . . ." [22]

Subsequent to the **Gottesman** decision, a number of district courts have expressed agreement with this con-

22. On remand in **Gottesman,** the district court held that the plaintiff failed to sustain her burden of proving damages resulting from the Section 7 violation, and the court of appeals affirmed. **Gottesman v. General Motors Corporation,** 310 F. Supp. 1257 (S. D. N. Y. 1970), *aff'd* 463 F. 2d 1205 (2d Cir.), *cert. denied* 403 U. S. 911 (1971).

clusion.[23] So have the courts of appeals for the Fifth and Eighth Circuits. **Dailey v. Quality School Plan, Inc.**, 380 F. 2d 484, 488 (5th Cir. 1967),[24] **Carlson Companies, Inc. v. Sperry and Hutchinson Co.**, 507 F. 2d 959, 961 (8th Cir. 1974).[25]

In the instant case, the Court of Appeals for the Third Circuit went far beyond the **Gottesman** rule and, in effect, rejected the cornerstone of the **Gottesman** reasoning by holding that the mere continued presence in the market of a company allegedly acquired in violation of Section 7 may provide a basis for a competitor to recover damages under Section 4 in spite of the absence of proof that the

23. **Metropolitan Liquor Co. v. Heublein, Inc.**, 305 F. Supp. 946, 948 (E. D. Wis. 1969); **Western Geophysical Co. v. Bolt Assoc., Inc.**, 305 F. Supp. 1251, 1254 (D. Conn. 1969); **Kirihara v. Bendix Corp.**, 306 F. Supp. 72, 88 (D. Hawaii 1969); **Isidor Weinstein Investment Co. v. Hearst Corp.**, 310 F. Supp. 390, 391 (N. D. Cal. 1970); **Metric Hosiery Co. v. Spartans Industries, Inc.**, 50 F. R. D. 50, 51 (S. D. N. Y. 1970); **Champion Spark Plug Co. v. Ransburg Electro-Coating Corp.**, 1971 Trade Cases ¶ 73,553 (N. D. Ohio 1971); **Calnetics Corp. v. Volkswagen of America, Inc.**, 348 F. Supp. 606, 616 (C. D. Cal. 1972), *rev'd on other grounds* 1976 Trade Cases ¶ 60,757 (9th Cir. 1976); **Peltier v. Humble Oil & Refining Co.**, 1973 Trade Cases ¶ 74,278 (D. Ore. 1972); **Zenith Vinyl Fabrics Corp. v. Ford Motor Co.**, 357 F. Supp. 133, 136 (E. D. Mich. 1973); **Heatransfer Corp. v. Volkswagenwerk A. G.**, 1975 Trade Cases ¶ 60,307 (S. D. Texas 1974), *appeal pending;* **Southern Concrete Co. v. United States Steel Corp.**, 394 F. Supp. 362, 373 (N. D. Ga. 1975).

24. On remand in the **Dailey** case, a jury found for the defendant and the court of appeals affirmed. **Dailey v. Quality School Plan, Inc.**, 427 F. 2d 1080 (5th Cir. 1970).

25. See also **Martin-Trigona v. Federal Reserve Board**, 509 F. 2d 363, 366 n. 12 (D. C. Cir. 1975) (dictum) and **Helix Milling Co. v. Terminal Flour Mills Co.**, 523 F. 2d 1317, 1323 (9th Cir. 1975) (dictum).

In **Calnetics Corp. v. Volkswagen of America, Inc.**, 1976 Trade Cases ¶ 60,757 (9th Cir. 1976), the Court of Appeals for the Ninth Circuit simply assumed that a private plaintiff could predicate a Section 4 claim for money damages on a Section 7 violation.

anticompetitive effects supposedly threatened by the acquisition had ripened into reality.

It would seem to be axiomatic that if a private action for damages for violation of Section 7 is to be allowed,[26] the "injury" that must be shown in order to recover is injury flowing from that which Section 7 was designed to prevent, *i.e.*, an actual lessening of competition or a monopoly. Numerous Section 7 cases have recognized this principle. See, for example:

> **Peterson v. Borden Co.**, 50 F. 2d 644, 646 (7th Cir. 1931) ("the right of action given to persons injured through the resultant tendency to substantial lessening of competition or creation of monopoly would include such injury only as such tendency to lessen competition or to create monopoly engendered");
>
> **GAF Corp. v. Circle Floor Co., Inc.**, 463 F. 2d 752, 759 (2d Cir. 1972), *cert. dismissed* 413 U. S. 901 (1973) ("only a person whose competitive business position was harmed by the *anticompetitive* effects of

26. For the reasons stated at pp. 22-24, *supra*, the validity of the **Gottesman** conclusion is open to serious doubt. Its practical application is also questionable in view of the fact that, although **Gottesman** was decided seven years ago and a number of courts have expressed agreement with its conclusion, there has been only one case (the instant one) in which damages have been awarded solely for a Section 7 violation.

It would not be inconsistent with any statutory language or Congressional purpose if this Court were to reject the **Gottesman** conclusion and hold that all damage actions involving alleged violations of Section 7 must await the realities of completed violations of Section 1 or Section 2 and be brought under one or both of those sections. Such a holding would not interfere in any way with Government enforcement actions or private actions for injunctive relief. However, the circumstances of the instant case are such that the Court need not address itself to this point.

the alleged restraint of trade can maintain a treble damage action");

Reibert v. Atlantic Richfield Co., 471 F. 2d 727, 731 (10th Cir.), *cert. denied* 411 U. S. 938 (1973) ("The first element [of proximate cause], causal connection between violation and injury, is lacking because appellant cannot show that any antitrust violations directly injured him. He has suffered no direct injury as a result of the prohibited lessening of competition");

Rayco Mfg. Co. v. Dunn, 234 F. Supp. 593, 597 (N. D. Ill. 1964) ("the injury must result from the lessened competition or monopoly itself");

Pandola v. Texaco, Inc., 1975 Trade Cases ¶ 60,232 at p. 65,931 (C. D. Cal. 1975) ("a private litigant must demonstrate not only that its injury is causally related to the challenged acquisition, but also that its claimed injury results directly from the specific anticompetitive consequences proscribed by Section 7 itself, *i.e.*, 'lessened competition or monopoly itself' ").

Perhaps the best statement of the principle is contained in **Dole Valve Co. v. Perfection Bar Equipment, Inc.**, 311 F. Supp. 459, 462 (N. D. Ill. 1970), where the court said:

> "To recover damages under Section 7 of the Clayton Act, a complainant must be able to show that he 'suffered some special damage to his business as a direct and proximate result of the acquisition. • • • the injury must result from the lessened competition or monopoly itself.' . . . Proof that a competitor made sales after it was unlawfully acquired by another, even if the complainant competed for those sales, is not evidence that the sales were the 'direct and proximate result' of the unlawful acquisition. If such were the rule, corporations violating Section 7 would become insurers of the commercial success of their competitors. This is not the law."

In a most extreme extension of the concept that a Section 7 violation may give rise to a claim for money damages under Section 4, the Court of Appeals for the Third Circuit has held in the instant case that a competitor of the "acquired" company need **not** show injury resulting from a lessening of competition or monopoly. Rather, according to the Third Circuit, the competitor may recover damages under Section 4 merely by showing "injury in fact causally related to the violator's presence in the market, **whether or not** that injury flows from or results in an actual lessening of competition" (Pet. App. p. 19a). The Court of Appeals has based this holding on the unprecedented theory that "illegal presence which causes injury to the business or property of a competitor is compensable under § 4" (*Ibid.*).

No other decision has ever gone to such an extreme. To the contrary, the principles espoused by the Third Circuit are a direct contradiction of the views expressed by the Second Circuit in **Gottesman** and by other courts which have agreed with the **Gottesman** conclusion. The cases indicating that damage recovery may be had in appropriate circumstances for a Section 7 violation proceed on the premise that the harm for which there may be such recovery must be harm that flows from the lessened competition or monopoly that Section 7 was designed to prevent.[27] That premise is clearly correct. Section 4 of the

27. In addition to the cases cited in the text, see also **Zenith Vinyl Fabrics Corp. v. Ford Motor Co.**, 357 F. Supp. 133, 137 (E. D. Mich. 1973); **Peltier v. Humble Oil & Refining Co.**, 1973 Trade Cases ¶ 74,278 (D. Ore. 1972); **Kirihara v. Bendix Corp.**, 306 F. Supp. 72, 90-91 (D. Hawaii 1969); and **Smith-Victor Corp. v. Sylvania Electric Products Inc.**, 242 F. Supp. 315, 320 (N.D. Ill. 1965).

Clayton Act was not enacted for the purpose of enabling business enterprises to obtain windfall verdicts but to compensate those persons who can demonstrate that they have been injured in their business or property by reason of the lessening of competition forbidden by the antitrust laws. See, *e.g.*, **Conference of Studio Unions v. Loew's, Inc.**, 193 F. 2d 51, 55 (9th Cir. 1951), *cert. denied* 342 U. S. 919 (1952).

Whatever its potentiality may be, an acquisition that has not, in fact, resulted in a substantial lessening of competition or a monopoly generates no anticompetitive consequences.[28] In the instant case, for example, what occurred in each of the markets in question was a mere substitution of competitors. Instead of facing competition in the Poughkeepsie area from a 26-lane bowling center operated by a third party, Holiday Bowl-O-Mat faced competition from that same 26-lane center operated by petitioner. There was no lessening of competition and no monopoly. Neither petitioner's takeover and continued operation of Dutchess Lanes nor its presence in the market eliminated any actual or potential competitors from the marketplace. Competition in the marketplace did not lessen. And the "acquired" bowling center was not shown to have achieved any greater share of the bowling patronage in the market after the "acquisition" than it had obtained before. The same was true in the Pueblo market area, petitioner merely substituting as a competitor for the prior operator of Belmont Lanes, and in the Paramus market area, petitioner merely substituting for the prior

28. It must be recalled that respondents withdrew their claim that petitioner violated Section 1 of the Sherman Act (A1548), that the jury rendered a verdict in petitioner's favor on respondents' claim that petitioner violated Section 2 of the Sherman Act (A1543), and that respondents did not appeal from the judgment entered on that verdict. The case before this Court is based solely on the claimed Section 7 violations.

operators of Fair Lawn and Interstate in 1965 and for the prior operators of Ten-Pin and Lodi in 1969 and 1970 respectively. How can petitioner's mere presence in these markets give rise to compensable "damages" under the antitrust laws? Petitioner's "acquisitions" did not lessen competition. They preserved existing competition in each of these markets.

Respondents argue that the continued presence in the market of the "acquired" centers was unlawful and that respondents are entitled to recover as "damages" what they would have earned had that "unlawful presence" been eliminated. But respondents' "unlawful presence" theory will not hold water. The continued presence of the centers in the market place was not unlawful. Respondents were not entitled to have their competitors disappear. The purpose of the antitrust laws is to protect and foster competition, and this obviously presupposes the presence of competitors. It is not the presence of the "acquired" business which offends the law. "[I]t is competition, not competitors, which the Act protects," **Brown Shoe Co. v. United States,** 370 U. S. 294, 344 (1962), and it is completely at odds with the entire thesis of Section 7, which is designed to prevent a lessening of competition, to permit recovery under that statute for "damages" stemming solely from the preservation and continuation of competition. Respondents should not be permitted to use the antitrust laws to insulate themselves from competition itself.

This case should have been dismissed by the courts below.

II.

THE "FAILING COMPANY" DOCTRINE REQUIRES DISMISSAL OF A TREBLE-DAMAGE ACTION BASED ON ALLEGED VIOLATIONS OF SECTION 7 OF THE CLAYTON ACT WHERE THE PLAINTIFFS' ENTIRE THEORY OF INJURY AND DAMAGE IS BASED ON THE PREMISE THAT THE "ACQUIRED" BUSINESSES WOULD HAVE FAILED AND DISAPPEARED FROM THE MARKET HAD THE DEFENDANT NOT KEPT THEM ALIVE.

Section 7 of the Clayton Act was never intended to "impede . . . a merger between a corporation which is financially healthy and a failing one which no longer can be a vital competitive factor in the market." **Brown Shoe Co. v. United States,** 370 U. S. 294, 319 (1962). If an acquired company did not have the resources to be an effective competitor in the market, Section 7 is not violated by its acquisition. **United States v. General Dynamics Corp.,** 415 U. S. 486, 506-510 (1974).

Ever since **International Shoe Co. v. FTC,** 280 U. S. 291 (1930), it has been firmly established that an acquisition is immune from challenge under Section 7 where the financial condition and resources of the acquired company are so dire that it faces the grave possibility of business failure and there are no prospective purchasers other than the acquiring company. See **United States v. Diebold, Inc.,** 369 U. S. 654 (1962); **Citizen Publishing Co. v. United States,** 394 U. S. 131 (1969); **United States v. Greater Buffalo Press, Inc.,** 402 U. S. 549 (1971). In adopting this "failing company" doctrine, the Congress[29]

29. Both Houses of Congress expressed an intention to preserve the failing company doctrine when Section 7 of the Clayton Act was amended in 1950. See **Brown Shoe Co. v. United States,** 370 U. S. at 331; **United States v. General Dynamics Corp.,** 415 U. S. at 506.

and this Court considered it more important to preserve competition by assuring the continued existence of a competitive entity than to eliminate the possible anticompetitive effects of the acquisition.

> "The failing-company defense presupposes that the effect on competition and the 'loss to [the company's] stockholders and injury to the communities where its plants were operated,' *International Shoe, supra,* at 302, will be less if a company continues to exist even as a party to a merger than if it disappears entirely from the market. It is, in a sense, a 'lesser of two evils' approach, in which the possible threat to competition resulting from an acquisition is deemed preferable to the adverse impact on competition and other losses if the company goes out of business." **United States v. General Dynamics Corp.,** 415 U. S. at 507.

In dealing with the "failing company" doctrine as a defense, this Court has stated that "the burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it." **Citizen Publishing Co. v. United States,** 394 U. S. at 138-139. But surely this rule as to the burden of proof has no application where a plaintiff seeks to recover on a principle of injury and damage which is based in its entirety on the premise that, were it not for the "acquisition," the "acquired" company would have failed and gone out of business.

Respondents' entire case is premised on the assumption that, had petitioner not taken them over for operation, the bowling centers whose continued operation is asserted to be the cause of respondents' claimed "damages" would have gone out of business and disappeared from the marketplace (A366-A367, A377-A404, A511-A513, A565-A566, A571, A586, A852-A855).[30] The Court of Appeals specifically recognized this:

> ". . . It is . . . argued that Brunswick's presence in these markets was illegal and that plaintiffs suffered damages . . . because in the absence of that illegal presence the acquired centers would have gone out of business thus effectively transferring customers to Treadway's centers" (Pet. App. pp. 9a-10a).
>
> "To meet this burden [of proving damages] the only evidence offered by plaintiffs was the expert opinions of several witnesses as to what profits the Treadway bowling centers would have made if Brunswick, instead of acquiring the centers, had permitted them to close" (Pet. App. p. 24a).

Thus, it was a necessary element of respondents' theory of injury and damage that the finder of fact first conclude that the bowling centers in question would have failed and gone out of business had petitioner not taken the places of the former operators of those centers. Indeed, in their own petition for certiorari, respondents insisted that the record in this case establishes, beyond any possible cavil, that those centers would, in fact, have gone

30. As one of respondents' witnesses graphically put it, "the assumption is that these centers would have fallen of their own economic weight if Brunswick didn't prop them up" (A853). See also A377-A379, A511, A571, A586 and A855.

out of business.[31] Respondents have made this assertion in order to nail down the factual premise for their "damage" claim, but in so doing respondents effectively have conceded the operative facts of the "failing company" doctrine, which precludes a finding that the "acquisitions" in question violated Section 7.

If the bowling centers in question would have failed and gone out of business but for petitioner keeping them open and viable as competitors,[32] they were "failing companies" whose "acquisition" could not have violated Section 7. Contrariwise, if the centers would not have gone out of business, the necessary premise for respondents' only claims of injury and damage is missing. In either event, respondents' case must fail.

The Third Circuit, however, failed to deal with this inescapable conclusion. It held that the burden was on respondents to prove, as the foundation of their damage claims, that but for petitioner's having continued their operation the centers taken over by petitioner would have failed and gone out of business (Pet. App. pp. 25a-27a). The Court further held that respondents had not proved this essential fact (Pet. App. pp. 25a-27a). Instead of entering judgment for petitioner, the Court of Appeals remanded the case for a new trial, giving respondents another chance to prove their case.

31. Petition for certiorari in **Treadway Companies, Inc. et al. v. Brunswick Corporation** (October Term 1975, No. 75-770), pp. 13-14.

32. The undisputed evidence was that petitioner did not repossess the equipment of a center unless the operator of the center was hopelessly insolvent (A1367-A1370, A1431). As the Court of Appeals pointed out, petitioner would then attempt to sell the repossessed equipment "in place to third parties. If no sale could be effected Brunswick would then consider operating the failing centers itself if there appeared to be any reasonable prospect that a positive cash flow would result" (Pet. App. p. 8a).

Additionally, the Court of Appeals held that in a new trial the burden would be on petitioner to prove that the centers which it took over and operated were "failing companies" (Pet. App. pp. 26a-27a). What the Court of Appeals apparently did not consider was that, if respondents were to succeed in proving that the centers in question would have failed and gone out of business, such proof would relieve petitioner of the burden of proving the same thing.

The insistence by the Court of Appeals that there be a new trial in this case appears to stem from that court's unreasoning obedience to this Court's pronouncement, in an altogether different context, in the **Citizen Publishing** case, *supra*, that "the burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it." But the Court's statement in **Citizen Publishing** was not addressed to circumstances similar to those present in the instant case, and the Court clearly did not have this type of case in mind when it made the statement. We submit that the remark in the **Citizen Publishing** case should not be used to defeat the fundamental and well-recognized principles that (1) the party who has the burden of proof on an issue is relieved of that burden where his adversary supplies the necessary proof [33] and (2) that a litigant should not be permitted to maintain mutually contradictory positions in

33. See, *e.g.*, **Bradford Audio Corp. v. Pious**, 392 F. 2d 67, 73 (2d Cir. 1968) ("The appellee may avail himself of the appellant's proof"); **Van Sant v. American Express Co.**, 169 F. 2d 355, 365 (3d Cir. 1948). ("[A] party may be relieved of the burden imposed upon him by the fact that the necessary proof is introduced by his adversary"); **Aetna Insurance Co. v. Taylor**, 86 F. 2d 225, 227 (5th Cir. 1936) ("The burden of proof is satisfied by actual proof of the facts of which proof is necessary, regardless of which party introduces the evidence"). See also **Carr v. National Discount Corp.**, 172 F. 2d 899, 903 (6th Cir. 1949).

the same lawsuit.[34] To hold otherwise and to permit respondents to blow hot and cold on the same question of fact is offensive to basic concepts of fairness and forthrightness. Moreover, permitting respondents to prevail here would subject to treble damages a party which has prevented a failing business from disappearing from the market, discourage other such competition-preserving rescues, and thus defeat the salutary purpose of the "failing company" doctrine.

It should be noted, moreover, that the fact that the rescued bowling centers in this case were "failing companies" is established on the present record both by proof and by admission. Interstate Lanes and Fair Lawn Lanes were sold as assets of a bankrupt parent corporation. Dutchess Lanes, Belmont Lanes and Ten-Pin-On-The-Mall were centers from which petitioner had repossessed the lanes and pinsetters due to defaults in equipment payments, and the evidence is that petitioner never repossessed equipment unless the debtor was hopelessly insolvent.

Apart from anything else, however, the fact that respondents introduced evidence of "damages" which ad-

34. See *e.g.*, **Scarano v. Central R. Co.**, 203 F. 2d 510, 512-513 (3d Cir. 1973) (It "is sometimes said to be a general rule that 'a party to litigation will not be permitted to assume inconsistent or mutually contradictory positions with respect to the same matter in the same or a successive series of suits' "); **Diaz v. Southeastern Drilling Co.**, 324 F. Supp. 1, 7 (N. D. Tex. 1969) ("No rule is better settled than the one that: 'A party who assumes and successfully maintains a certain position in a judicial proceeding cannot thereafter adopt an inconsistent position if doing so would result in prejudice to his adversary' "). See also **Davis v. Wakelee**, 156 U. S. 680, 689 (1895); **Jamison v. Garrett**, 205 F. 2d 15, 17 (D. C. Cir. 1953); **Lummus Co. v. Commonwealth Oil Refining Co.**, 280 F. 2d 915, 928 (1st Cir. 1960); **Roth v. McAllister Bros., Inc.**, 316 F. 2d 143, 145 (2d Cir. 1963). And see **Holcomb v. Aetna Life Insurance Co.**, 255 F. 2d 577 (10th Cir. 1958); **Jones v. Central of Georgia Ry. Co.**, 331 F. 2d 649 (5th Cir. 1964).

mittedly was premised on the fact that the bowling centers taken over and operated by petitioner otherwise would have failed and disappeared should be given the force of a judicial admission and should be sufficient, in the absence of any countervailing evidence, to invoke the "failing company" doctrine and to compel the entry of judgment for petitioner.

The courts below should have ordered the entry of a judgment of dismissal as a matter of law.

CONCLUSION.

For the reasons set forth above, the judgment of the Court of Appeals for the Third Circuit should be reversed insofar as it directs a new trial in this matter. The case should be returned to the United States District Court for the District of New Jersey with directions to dismiss the action.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

—v.—

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

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Errata to Brief for Respondents

Page (and Line)	*Correction*
19 (first full paragraph, third line from bottom)	the quoted words "salvation operation" should read "salvage measure"
22 (first full paragraph, bottom line)	"1866" should read "A. 1866"
30 (second full paragraph, fourth line)	"opinion on" should read "opinion of"
32 (fifth line of the quoted excerpt from the du Pont case)	*"at any time"* should read *"at or any time"*
35 (first line)	"the" should be inserted between "thus," and "post-operative"
36 (first full paragraph of text, second line)	"holding as" should read "holding on"
38 (first full paragraph, first line)	"to" should be inserted between "holding on" and "or the retention"
38 (first full paragraph, second line)	"constitute" should read "constitutes"

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

—v.—

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

Questions Presented

Both sides petitioned for a writ of certiorari. Respondents' petition has not been ruled upon and apparently has been held in abeyance for further action by the Court. On February 23, 1976 this Court certified the following two questions presented by Brunswick:

> 1. Does the mere continued presence in certain local markets of retail establishments allegedly "acquired" by a "deep pocket" manufacturer in violation of Section 7 of the Clayton Act afford a basis for competing retailers to recover damages under Section 4 of the Clayton Act when there is no proof that the "acquisitions" resulted in any lessening of competition or monopoly in those markets?

2. Does not the "failing company" principle require dismissal of a treble-damage action based on alleged violations of Section 7 of the Clayton Act where the plaintiffs' entire damage theory is based on the premise that the "acquired" businesses would have failed and disappeared from the market had the defendant not kept them alive by making the challenged "acquisitions"?

The Proper Scope of the Questions

The major premise in Brunswick's first question—that "there is no proof that the 'acquisition' resulted in any lessening of competition or monopoly in those markets"—is expressly discredited by the district court and by the court of appeals.

The district court concluded that "there was ample evidence adduced at the trial to show how Brunswick's entry into the retail market lessened competition" (37a)* and that "corporate size and status as a manufacturer are crucial to the question of whether competition was lessened" (44a).

The court of appeals took the view that "that there was sufficient evidence here to go to the jury on the theory that Brunswick's entry into a local retail market both created the possibility of substantially lessening horizontal retail competition and tended toward the creation of a retail monopoly" (11a) and that there was sufficient evidence of "potential harm to horizontal competitors" to submit the issue to the jury (14a).

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* Page numbers with an "a" suffix reference the opinions of the courts below annexed to Brunswick's petition.

In its decision on the equity aspects of the case the district court held (55a):

> Brunswick is a manufacturer of bowling equipment and its acquisition of these bowling lanes, which were potential and actual purchasers of its equipment, provided it with the opportunity of acting . . . as a rich parent with a deep pocket. In Brunswick's case, however, the opportunity to tap the deep pocket did not prove merely to be a potentiality.

In its brief Brunswick side-steps these findings and the jury's finding that it violated Section 7 using this verbal glissade (pp. 16-17, n. 14):

> Whether or not petitioner had a "deep pocket" and whether or not by reason thereof its "acquisition" and operation of bowling centers had a potential to harm horizontal competitors are questions relevant only to the issue of whether or not Section 7 was violated, and not to the questions presented to this Court.
>
> The first question presented in this case assumes, *arguendo,* that a Section 7 violation might be found. . . .

Thus the first question which related to the right of competing retailers to collect damages, as construed by Brunswick, seeks to project an argument and a ruling by this Court on a hypothetical question which contains an absurdity unworthy of the Court's attention. In effect the Court is asked to make a declaratory judgment on a jejune question of no importance and unrelated to the facts of the case as to whether damages may be found on an assumption, for purpose of argument only, that a Section 7 violation "might" be found.

We do not believe that the Court meant to subsume as a major premise in certifying this question that there might

be no evidence whatever to support the findings of the jury or the trial court as affirmed by the court of appeals. Indeed, Brunswick does not ask for a reversal of the fact findings. It instead pretends that they do not exist and that this case like some incubus in a vacuum survives without a factual showing of a violation of law and, consequently, that we should import into the certified language of the question—*"mere continued presence"*—the gloss that what is meant is *mere continued lawful presence.* Indeed, Brunswick's strained interpretation of the two questions would have this Court merely substitute an inconsistent fact hypothesis for the facts proved by abundant evidence and found by the jury. This method would block the Court from deciding any of the questions below which the court of appeals characterized as being "of first impression nationally" (6a), "exploring largely virgin antitrust territory" (7a), and having "far-reaching ramifications" (19a).

In short, Brunswick's interpretation of the questions sweeps away all that has happened in ten years of litigation.

Counterstatement of the Case

Brunswick's extreme position supposes potential of effect on competition *"arguendo"* being present but not an actual lessening of competition or tendency to monopolize (Brunswick Brief, p. 17, n. 14). Brunswick has relied upon hypothetical facts consistent with its hypothesis rather than the facts already of record which were determined by the jury, trial court (in equity) and court of appeals. Consequently respondents are required to make this Counterstatement of the Case.

A. *The Parties and Prior Proceedings*

Since late 1964 petitioner Brunswick Corporation ("Brunswick") has acquired and then operated 222 domestic bowling centers, including 167 operated in 36 states in 1973 at the time of trial (Pl. Ex. 46; A. 322, 1683-99; Pl. Ex. 49; A. 342, 1734; Pl. Ex. 50; A. 353, 1735). Each was acquired from an independent proprietor which had fallen behind or defaulted in payments to Brunswick for automatic pinsetters, lanes and other bowling equipment (Pl. Ex. 27; A. 242, 1628-31 at 1628; A. 261-62; A. 701-02). Within the first few months of 1965 Brunswick became the operator of the largest chain of bowling centers in the industry's history (Pl. Ex. 44; A. 312, 1675).

In their complaint filed in the United States District Court for the District of New Jersey on June 14, 1966, respondents Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc., and Bowl-O-Mat Paramus Operations charged Brunswick with acquiring and then operating bowling centers in Pueblo, Colorado, in Poughkeepsie, New York and in or near Paramus, New Jersey in violation of Section 7 of the Clayton Act (15 U.S.C. §18). In all 222 of its acquisitions, Brunswick acquired and then operated the bowling centers through its Bowling Centers Operations Division ("BCOD").

Four of the six BCOD centers pertinent here were acquired by Brunswick in 1965. They were Belmont Lanes, a losing 24-lane center in Pueblo (Pl. Ex. 46; A. 322, 1683-99 at 1686); Dutchess Lanes, a losing 26-lane center in Poughkeepsie (A. 1691); and Interstate Lanes and Fair Lawn Lanes, a 40-lane and a 32-lane center located near Paramus (A. 1683) which were acquired at a bankruptcy sale (A. 476-78). In 1969 Brunswick acquired Ten-Pin-on-

the-Mall, a losing 36-lane center located a quarter of a mile from respondents' center in Paramus (A. 213), and in 1970 Brunswick began operating Lodi Lanes, a losing 40-lane center located near Paramus under a three-year lease (A. 1697-98; Pl. Ex. 81; A. 1442, 1850-63).

The first trial resulted in a hung jury on May 5, 1970 after one of 12 jurors held out for Brunswick for two days (A. 1360). The second trial ended on May 11, 1973 when six jurors unanimously returned verdicts in favor of respondents totally $7,074,090 (after trebling) based upon their finding that Brunswick had violated Section 7 by its illegal acquisition and operation of bowling centers in their markets.*

On September 17, 1973, the trial judge (Hon. Lawrence A. Whipple) denied Brunswick's post-trial motions in all important respects although Pueblo Bowl-O-Mat, Inc. was ordered to consent to a remittitur of $499,050. Judgments later entered by the district court awarded respondents $6,575,040 for treble damages, $428,468 for attorneys' fees, $18,509.32 for costs, and the relief of divestiture in Pueblo, Colorado and Paramus, New Jersey.

In its opinion filed August 29, 1975, the Court of Appeals for the Third Circuit affirmed in respondents' favor (a) that the district court properly found sufficient evidence to go to the jury on whether Brunswick violated Section 7 by acquiring and then operating bowling centers in the Pueblo,

* Thus after 59 trial days and 4,917 pages of trial transcript in this litigation now over ten years old, 17 out of 18 jurors have found in respondents' favor. The jury held in favor of Brunswick on claims asserted under Section 2 of the Sherman Act by the three respondents, their parent company Treadway Companies, Inc. and several other Treadway subsidiaries.

Paramus and Poughkeepsie markets (11a, 14a) and; (b) that the district court properly held that Section 4 of the Clayton Act provides a private remedy for Section 7 violations (19a, 24a). The Court of Appeals, nonetheless, reversed and remanded the case for yet a third trial because it felt that the district court had improperly instructed the jury concerning (a) the "new" test of "engaged in the flow of interstate commerce", formulated two years later in *United States* v. *American Building Maintenance Industries*, 422 U.S. 271, 283, 95 S.Ct. 2150, 2156 (1975) (15a-16a, 24a); (b) the elements to consider in determining if Brunswick's acquisitions substantially lessened competition or tended to create a monopoly in the relevant markets (21a-23a); and (c) the proper measures of damages (24a-27a).

B. *Facts Found by the Jury and the Trial Court Sitting in Equity*

BCOD became operative January 1, 1965 (Pl. Ex. 64; A. 828, 1746-64 at 1746), and during the ensuing three or four months BCOD created what was by far the largest chain of bowling centers in the domestic industry's history (Pl. Ex. 44; A. 312, 1675). This unprecedented growth of a chain was made possible by the powerful leverage Brunswick exerted as the country's largest manufacturer of bowling equipment (Pl. Ex. 87; A. 1448, 1864-65) and as the country's fourth largest credit organization extending vast credit to purchasers of Brunswick's basic lane and pinsetter equipment (Pl. Ex. 1; A. 107, 1574; Pl. Ex. 1A; Tr. 232, A. 1575; A. 91-96; A. 634-35). Brunswick's assets in 1965 were more than one-half billion dollars, and its revenues exceeded $300 million (D. Ex. 30; A. 1014, 1887-1906 at 1899). Brunswick represents that it is "the number one name in bowling" (A. 674; A. 677; A. 681; Pl. Ex. 29;

A. 264, 1632-51 at 1634) and has enjoyed 113 years of leadership in the industry (A. 128-29; Pl. Ex. 3; A. 128, 1587-92 at 1592).

Other dimensions of Brunswick's powerful integrated position in the bowling industry also were fully documented at the trial. Brunswick's net worth and gross revenues in 1973 were about seven times larger than the combined totals for the 10 largest independent bowling chains (A. 313-15; Pl. Ex. 45; A. 312, 1676-82; Pl. Ex. 46; A. 324, 1683-99). The second largest bowling chain operated 32 centers (Pl. Ex. 44; A. 312, 1675) as compared with Brunswick's 1973 total of 167 (Pl. Ex. 32; A. 274, 1661; Pl. Ex. 46; A. 324, 1683-99; Pl. Ex. 50; A. 353, 1735). The rest of this fragmented market was occupied by many smaller chains and individual operators (Pl. Ex. 44; A. 312, 1675). In 1971 Brunswick had net assets of $430,000,000, Treadway had a net worth of $4,118,000, and the remaining nine leading independent bowling chains had an aggregate 1968 net worth of only $132,172,000 (A. 315; Pl. Ex. 44; A. 312, 1675). Brunswick had total revenues of over $300 million in 1968 (A. 637-38), while the ten largest public corporations in the independent bowling-center business had total revenues of $49,461,000, or approximately 12% of Brunswick's (Pl. Ex. 44; A. 312, 1675).

On November 15, 1974, the district court handed down its opinion and order disposing of respondents' motion for equitable relief (50a-60a) in which Judge Whipple stated that "... I have specifically made findings concerning the anti-competitive practices utilized by the defendant in causing the plaintiffs' injury ..." (56a-57a).* Those

* The equity proceeding is not a separate matter. The court made its findings on the same record used by the jury, and the third circuit ruled that a Brunswick appeal from the jury verdict before the equity proceeding was decided was premature and required the jury verdict and the injunction to come up together as two claims of the same case (A. 1564-65).

express findings had as their central theme Brunswick's abuse of its powerful integrated position in the bowling industry generally and in the bowling center business in particular. The district court quoted an excerpt from *Reynolds Metals Co.* v. *Federal Trade Commission*, 309 F. 2d 223, 229-30 (D. C. Cir. 1962) and expressly found these facts (55a):

> Brunswick is a manufacturer of bowling equipment and its acquisition of these bowling lanes, which were potential and actual purchasers of its equipment, provided it with the opportunity of acting, like Reynolds, as a rich parent with a deep pocket. In Brunswick's case, however, the opportunity to tap the deep pocket did not prove merely to be a potentiality.
>
> The history of the bowling industry and Brunswick's role in it is particularly illustrative on this point. Prior to Brunswick's entrance into the market of operating bowling centers, control of these businesses rested in the hands of single proprietors and a few small chains. One year after its entrance, however, Brunswick controlled 176 bowling centers in the United States and immediately became the industry's largest single operator controlling 5.5 times more centers than any of its competitors (Pl. Ex. 32; A. 274, 1661).

Not surprisingly, in 1965 Brunswick received a legal opinion from counsel on this appeal stating that because of its highly integrated position in the bowling industry generally, Brunswick's occupancy of 25% or more of a particular local bowling center market probably would create an illegal monopoly (A. 227; A. 1260-67). Respondents in-

troduced evidence showing that through BCOD Brunswick wrested local market positions of 20% in Pueblo, of 20% in Poughkeepsie and of 39% in Paramus (Pl. Ex. 3; A. 128, 1587-97, at 1590; Pl. Ex. 10; A. 190, 1604-22 at 1620-21; Pl. Ex. 14; A. 415, 1626).

Beginning in 1965 independent Brunswick customers everywhere were forced to become direct competitors of their supplier Brunswick. They frequently competed with BCOD centers which either operated at substantial losses or at most realized minimum profits. Respondents' proof at the trial showed that continued operation of Brunswick's centers at a loss was the economic reality which confronted them in Pueblo, Poughkeepsie and Paramus. Indeed, during most of the years in question the BCOD centers in those three markets would have incurred substantially higher losses had they been required to assume the formidable burdens of indebtedness for pinsetters and lanes imposed upon independent Brunswick customers such as respondents. Plaintiffs' Exhibits 47 and 48 depict these critical facts for 1965-1972 in terms of profit-and-loss and cash flow realized (a) under BCOD's accounting, and (b) under accounting used by independent Brunswick customers. Annexed as Appendix A is a summary of Exhibit 47's pertinent figures.

Under BCOD's accounting Brunswick centers paid neither interest nor outstanding balances on pinsetters and lanes, whereas their direct competitors—the independent Brunswick customers such as respondents—had to pay Brunswick $320 for interest and $1,670 for outstanding balances due each year on each pinsetter and lane (Pl. Ex. 1; A. 107, 1574; Pl. Ex. 1A; Tr. 232, A. 1575-76; Pl. Ex. 2; Tr. 2504, A. 1584-86). As Appendix A shows, even under

the favorable BCOD accounting, Belmont Lanes lost $90,874 during 1965-1970, Dutchess Lanes lost $88,874 during 1965-1969, Ten-Pin-on-the-Mall lost $12,731 during 1969-1970 and 1972, and Lodi Lanes lost $73,512 in 1970 and 1972. The Appendix A figures also show that independent Brunswick customers would have lost $141,310 had they operated Belmont Lanes during 1966-1970, $153,582 at Dutchess Lanes during 1966-1969, $109,658 at Ten-Pin during 1970-1972, and $146,147 at Lodi Lanes during 1971-1972.

The dimensions of the losses incurred by Brunswick of $90,874 at Pueblo for the six years 1965-1970 and $88,874 at Poughkeepsie for the five years 1965-69 serve as a wry comment on the testimony at the trial of John L. Hanigan (Brunswick's Chairman of the Board) that BCOD centers operating at a loss should not be maintained for more than two or three years (A. 709).

Brunswick's "deep pocket" shaped virtually every aspect of the operations of the BCOD centers in Pueblo, Poughkeepsie and Paramus. In Pueblo, BCOD's Belmont initiated a "pattern" of "giveaways" and "price-cuts" as well as the "Learn to Bowl" inducment (A. 154-55; A. 169-170; A. 222-23). In Poughkeepsie, BCOD's Dutchess began price-cutting (A. 431) and Brunswick continued operation of the center despite losses each year which totaled $88,874 over five years (A. 621-24; Pl. Ex. 47; A. 341, 1700-16, at 1708; Pl. Ex. 48; A. 341, 1717-33, at 1725). The income of the Poughkeepsie respondent rose sharply after Brunswick closed Dutchess in 1969 (A. 435-36; A. 561-567; A. 830-34) to the magnitude of $429,348 in 1972 (Pl. Ex. 11; A. 205, 1623; A. 208; A. 562-64). And in Paramus Brunswick also underwrote numerous inducements in its BCOD centers, including cut-rate prices and free trips to

Europe (A. 222-23; A. 569) which would be "too expensive" for the Paramus respondent to offer (A. 223; A. 569). BCOD's Fair Lawn initiated cut-rate programs (A. 413-14), and Brunswick reduced prices at Ten-Pin-on-the-Mall (A. 419-21) and Interstate Lanes (A. 602-03).

The competitive advantages created by Brunswick's "deep pocket" for the BCOD centers vis-a-vis the Brunswick independent customers which were their direct competitors went far beyond the advantages normally enjoyed when competitors have limited resources. Respondents demonstrated at the trial that once Brunswick foreclosed on and then acquired one of its customers, the BCOD center it then operated enjoyed concrete competitive advantages which could be evaluated at $2,000 per lane per year. These competitive advantages accruing each year to BCOD centers are computed as follows (Pl. Ex. 1; A. 107, 1574; Pl. Ex. 1A; Tr. 232, A. 1575-76; Pl. Ex. 1B; Tr. 2075, A. 1577-83; Pl. Ex. 2; Tr. 2054, A. 1584-86; A. 86-87; A. 93-97):

	Independent Brunswick Customer	Competing BCOD Center
Interest	$ 320	$—0—
Unpaid balance/pinsetters	960	—0—
Unpaid balance/lanes	720	—0—
	$2,000	$—0—

For an average-sized Brunswick customer operating 40 lanes, those competitive advantages totaled $80,000 a year (Pl. Ex. 48; A. 341, 1717-33) and—at the old rate of fifty cents a game (A. 73)—such a Brunswick customer would have to set aside revenues realized from 160,000 games

each year in order to allow for these depreciation, interest and principal charges which Brunswick did not charge to itself. As applied to respondents, this competitive advantage for Brunswick amounted to $80,000 or 160,000 games yearly for respondents' 40-lane center in Pueblo (A. 124) and $72,000 or 140,000 games yearly for their 36-lane centers near Poughkeepsie (A. 187-88) and in Paramus (A. 211).

In its opinion on equitable relief dated November 15, 1974, the district court expressly found that the three respondents were victims of Brunswick's abuse of its deep pocket position in the bowling center industry (55a-56a):

> . . . As a credit-extending parent [Brunswick] was able to subsidize the purchase of its newly-acquired business at the rate of $2,000.00 per lane (Pl. Exs. 1, 1A, 2), while it placed the plaintiffs on a "cash only" basis although prior to entry in this market it customarily extended credit to these plaintiffs (Pl. Exs. 35-38; Lieblich [A. 282-98]). Obviously the defendant utilized its position as a major supplier and creditor not only to nourish its own newly-acquired children but also to deprive its newly-found rivals.
>
> This naturally jealous parent also sought to favor its newly-acquired businesses by endowing them with the allurements of give-away programs and special services as the Learn-to-Bowl series. The object was to attract and increase patronage of these bowling centers by individual bowlers and leagues. In this they were successful and drew patronage away from the plaintiffs. . . . The deep pocket of the rich parent certainly contributed to the expenditures made on these programs.

The district court later concluded that these abuses created the need for the award of divestiture (59a):

> . . . [I]t is apparent that the defendant's position in the bowling industry both as a supplier-purchaser and creditor-borrower has infused it with the capacity to out-distance the efforts of its rivals because of the deep pocket of its manufacturing arm. Whether this deep pocket should or should not be utilized to finance give-aways and other promotional schemes or to subsidize or not to subsidize the purchase of newer and more attractive bowling equipment, it is clear that the opportunity for abuse of this economic power is ever present.

BCOD officially came into being January 1, 1965 (Pl. Ex. 64; A. 838, 1746-64 at 1746), but long before then Brunswick had formulated the purposes it hoped to achieve by competing with its own customers through BCOD (Pl. Ex. 64; A. 828, 1746-64; A. 645-52; A. 693-701; A. 829-30; A. 1418-21). These included this key objective aimed at Brunswick's customers (Pl. Ex. 64; A. 828, 1745-64, at 1762):

> The A-2 conversions [more modern automatic pinsetters] in the better [BCOD] houses and certain geographical areas will aid in increasing revenues, enticing competition to try to convert also and thus assist the Bowling Division sales.*

Respondents became targets of Brunswick's objective concerning the A-2 conversions in Pueblo and Paramus. Although Belmont was a consistent loser rather than a "better" BCOD house (Pl. Ex. 64; A. 828, 1745-64 at 1762), Brunswick nevertheless installed the A-2 conversions there (A. 170) which shortened an average bowling game by 15 to

* Another articulated objective rebuts the claim that the acquisitions were part of a salvage operation. It was that consideration be given to using new BCOD centers as competitive barriers ("interceptors") against centers supplied by AMF, Brunswick's competitor in the sale of equipment (Pl. Ex. 64; A. 828, 1745-64 at 1754).

17 minutes, thus allowing the "second shift" of bowlers to begin earlier—a significant fact in "early-to-bed" Pueblo (A. 503-04). League bowling—a major component of a bowling center's revenue (Tr. 1198-99; A. 669-71)—was immediately siphoned off by Belmont (A. 503-04). The Pueblo respondent was not thereby enticed "to try to convert also" (Pl. Ex. 64; A. 828, 1745-64 at 1762) because the A-2's per-lane cost was substantially above $8,700 to $9,000 and the conversion from A-1 equipment cost $1,800 to $2,000 per lane (A. 505). Thus the A-2 conversions would have cost between $75,000 and $80,000. These figures were beyond the meager resources of the Pueblo respondent (A. 505-06), which lost over $62,000 in 1967 (A. 506) and which has always been in the red (A. 506-07; Pl. Ex. 8, A. 167, 1602).

Similar competitive distortions were experienced in Paramus when Brunswick installed A-2's in Interstate and Fair Lawn Lanes (A. 426-27; A. 829-30). But as in Pueblo, Brunswick failed to entice the Paramus respondent "to try to convert also" (Pl. Ex. 64; A. 828, 1746-64, at 1762) because it also consistently lost money due to Brunswick's anticompetitive pressures (Pl. Ex. 13; A. 220, 1625).

Still other aspects of the "deep pocket" created by Brunswick's integrated position in the bowling industry now are facts of record. Brunswick's exaggerated market surveys for potential customers induced far too many bowling centers to enter particular local markets for any one of them to have reasonable prospect for survival (A. 123-25; A. 189-98; A. 551-52). Strong economic pressure led Brunswick to make misleading surveys because once Brunswick persuaded a customer to open a center and to put a 30% down payment on its pinsetters (A. 674-75; A. 259-60), Brunswick instantly recouped its manufacturing cost on its

pinsetters; that cost was $2,100, or 26% of the $8,100 sales price charged to its customers (A. 649). Similar safety margins applied to sales of Brunswick's lanes. It is in this real world of Brunswick's certain profits that its statement that "[t]he bowling industry went into sharp decline and petitioner ran into a nightmare of collection problems and hopeless defaults" must be appraised (Brunswick Brief, p. 7).

Brunswick's economic stakes in each new sale of lanes and pinsetters were extremely high. Allowing for interest factors, purchases made by a typical 40-lane bowling center entailed payments of almost $400,000 for the pinsetters, over $200,000 for the lanes, and some $96,000 (excluding interest) for ancillary equipment (Pl. Ex. 1; A. 107, 1574), and the investment totalled $700,000 for this equipment alone. Unfortunately, however, the overbuilding caused the bowling center business to fall into a sharp decline, and hundreds of centers which became deeply in debt to Brunswick for pinsetters and lanes were vulnerable for the BCOD acquisitions which followed (A. 70-72; A. 261-62).

For example, seemingly in anticipation of its 1965 acquisition of Belmont in Pueblo (A. 169-70) Brunswick permitted Belmont to pay, after a down payment, only $2,300 for its lanes and pinsetters during 1962-65 whereas its direct competitor respondent Pueblo Bowl-O-Mat, Inc. was forced to pay full amounts due on its contract totaling some $240,000 during this three-year period (Pl. Ex. 1; A. 107, 1574; Pl. Ex. 7; A. 163, 1601; A. 144-46; A. 161-65). Thus for all practical purposes the Pueblo respondent was required to subsidize Belmont by some $237,700. Similar arithmetic was applicable to Brunswick's centers in the Poughkeepsie and Paramus markets.

Respondents experienced severe economic dislocations and competitive injuries in their local markets because of Brunswick's wilfull inducement of the overbuilding of bowl-centers. In Pueblo, AMF concluded on May 31, 1961 that new bowling facilities were not "justifiable" (A. 159-61; Pl. Ex. 6; A. 159, 1599-1600 at 1599). Brunswick nonetheless assured the Pueblo respondent prior to its August 1960 opening that it could expect 17,000 lines per lane per year (A. 123-25)—"an excellent volume of business" (A. 124)—and in 1962 Brunswick assured the potential owners of Belmont, which it later acquired, that there was a "definite need for more bowling facilities in this area" (Pl. Ex. 4, A. 128, 1593-97 at 1595) even though its contemporaneous analysis stated flatly that "the economy in Pueblo cannot support an additional 24 lanes . . . " (Pl. Ex. 6; A. 159, 1599-1600).

Brunswick's market surveys on both Pueblo and Poughkeepsie reflected both its insatiable drive to increase its bowling equipment sales and its reckless disregard of the accepted industry view that 1,500 to 1 was a healthy ratio of persons per lane. In Pueblo, AMF subtracted "25,000 people of extremely poor financial means" (Pl. Ex. 6; A. 159, 1599-1600 at 1599) in concluding that there actually was a ratio of 691 persons per lane, but less than a year later Brunswick advised Belmont that the ratio was 2,400 to 1 (Pl. Ex. 3; A. 128, 1587-9; Pl. Ex. 4; A. 128, 1593-97). And Brunswick's Evaluation Report No. 76 (Pl. Ex. 10; A. 190, 1604-22; A. 189-98) acknowledged that Brunswick itself caused overbuilding in the Poughkeepsie market, stating that although 950 to 1 is the "proper ratio", the actual ratio was 780 to 1 (Pl. Ex. 10; A. 190, 1604-22 at 1610, A. 189-98).

Brunswick claims that respondents' lawsuit "is in sharp contrast with the action of the Federal Trade Commission" (Brunswick Brief, p. 13, n. 9). Brunswick repeatedly has made this claim even though it knows it to be false because the F.T.C. stated categorically in 1969 that its earlier "no action" letters which supposedly support this claim could not "be in any sense interpreted as a determination of the issues involved in a privately litigated matter" (Supp. App. 49b to the briefs before the court of appeals).

C. *Facts Rejected by the Jury and Trial Court But Nonetheless Relied Upon by Brunswick*

The absurdity of the argument that this Court must decide this appeal on the basis of hypothetical facts which make irrelevant "whether or not Section 7 was violated" (Brunswick Brief, p. 17, n. 14)—rather than the facts of record which were before the jury and the trial court sitting in equity—is demonstrated from "factual" presentations made in Brunswick's Brief. First, the Brunswick Brief ignored the previously-described precise findings of the court and jury that Brunswick's "deep pocket" created tendencies to lessen competition or create monopolies in Pueblo, Paramus and Poughkeepsie.

Moreover, in its carefully insulated recital of the "Background" (Brunswick Brief, pp. 5-9) Brunswick portrays itself as an innocent victim of uncontrollable economic forces, striving solely to protect its accounts receivable and doing no more than repossessing lanes and pinsetters in the best interests of its stockholders. This thesis also is repeated in its versions of the BCOD acquisitions in respondents' three local markets (Brunswick Brief, pp. 9-13). These imagined "facts" about its heroic attempts to "salvage" its "distressed" BCOD centers were expressly rejected not only by

the jury but also by all of the members of the national trade association of independent bowling proprietors.

As noted (page 14), two major objectives which Brunswick hoped to achieve by entering the bowling center business were (1) to "assist the Bowling Division sales" by "enticing" Brunswick's customers to make expensive A-2 conversions in order to compete with converted BCOD centers, and (2) to use new BCOD centers as "interceptors" to AMF centers (Pl. Ex. 64; A. 828, 1745-64). Brunswick voiced quite different objectives when it attempted to justify BCOD before the aroused independent bowling center proprietors. The confrontation took place at the annual convention of the Bowling Proprietors Association of America ("BPAA") held in June 1965 in San Juan, Puerto Rico. In speeches made there by John L. Hanigan (then Brunswick's president) (Pl. Ex. 27; A. 242, 1628-31) and by BCOD head Milton Rudo (Pl. Ex. 74; Tr. 3419, A. 1802-34), BCOD repeatedly was depicted as a "salvation operation" or "distress" measure (Pl. Ex. 74; Tr. 3419, A. 1802-34 at 1806).

Mr. Rudo's speech was followed by unanswerable and prophetic questions from the floor.* Then the BPAA membership unanimously adopted this resolution which showed that they regarded "salvage" as sop for Cerebus (A. 244-45):

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* Typical challenges to Mr. Rudo: "Is it the fact . . . you have a little more money behind you to carry you through and maybe outlast the fellow down the street? This . . . is the crux of the whole thing" (Pl. Ex. 74; Tr. 3419, A. 1802-34 at 1821). "You have millions of dollars behind Brunswick" (Pl. Ex. 74; Tr. 3419, A. 1802-34 at 1822). "In other words, you would be in position to set the price [of centers] high enough so you couldn't sell them" (Pl. Ex. 74; Tr. 3419, A. 1802-34 at 1824). "[T]he concern of all of us [is] that the success of the Brunswick recovered houses is going to be at the expense of their neighbors in the bowling business" (Pl. Ex. 74; Tr. 3419, A. 1802-34 at 1830).

> Resolved, that we, the members of the Bowling Proprietors Association of America, hereby express our grave concern that the incursion of the Brunswick Corporation into the area of operation of bowling centers in direct competition with members or nonmembers of this Association is not in the public interest and is injurious to competition based upon its preeminent position as a manufacturer and supplier, major creditor and financier in the bowling field.

Although the district court excluded the exact wording of this resolution from the jury in order to avoid prejudicing Brunswick (A. 245), the jury was made aware of its substance. It also heard testimony from Rex M. Golobic, the current President of BPAA (A. 653-54), that this censure of Brunswick is still BPAA policy (A. 664-65).

Within four years Brunswick had abandoned all pretences about "salvage" and "distress". In June 1969 Mr. Hanigan told the New York Society of Security Analysts (Pl. Ex. 30; A. 268, 1652-60; A. 268) that Brunswick "found the bowling business at retail [is] a good business" (Pl. Ex. 30; A. 268, 1652-60 at 1657; A. 269) and in 1970 he predicted to Brunswick's stockholders that by 1973 BCOD would earn at least $3,000,000 annually before taxes. (In fact, BCOD's domestic profit for 1972 was over $6,000,000 per Pl. Ex. 32; A. 274, 1661.) Also in negation of its "salvage" claim, Brunswick built new centers (A. 265-67; A. 277-78; A. 1107-13; Tr. 2953-54; A. 1113-15; A. 1222-23) contrary to Mr. Rudo's claim in June 1965 that "we don't intend to develop new bowling centers" (Pl. Ex. 74; Tr. 3419, A. 1802-34, at 1817). Another fiction created by Rudo in June 1965—that any BCOD center "in our portfolio is for sale" (Pl. Ex. 74; A. 3419, 1802-34, at 1820)—was refuted by Mr. Hanigan's 1972 statement to Brunswick's

stockholders that only two of its 200-odd "salvaged" centers had been sold from 1965 through 1970* (A. 1382).

The fictitious nature of Brunswick's "salvage" thesis also is demonstrated by the vastly different policies of AMF, Brunswick's major competitor as a bowling manufacturer (A. 864). The court of appeals noted (9a, n. 5):

> By contrast with Brunswick, although AMF undoubtedly suffered from the decline in the bowling recreation industry in the early 1960s it never integrated forward into the retail end of the business so as to be in competition with its actual or potential customers.

Brunswick also is relying upon hypothetical facts instead of facts of record when it argues that "calling . . . repossessions 'acquisitions' does not make them the kind of transactions" which concerned Congress when it enacted Section 7 in 1914 and amended it in 1950 (Brunswick Brief, p. 14, n.10). This statement misconstrues the transaction. When Brunswick acquired a bowling center it did it by two steps, first foreclosing under its conditional bill of sale against the pinsetters and lanes, reflecting by far the largest investment in a bowling center (p. 16, *supra*). The foreclosure placed the proprietor of the center in an untenable position, making possible Brunswick's second step—the acquisition of the center itself. Repossession of the pinsetters and lanes left no options for the proprietor and left him helpless to resist the subsequent acquisition of the other assets of the center needed to run a going business, including real estate deeds or leases, league and nonleague customers, bars, liquor licenses and good will, a location near a bowling population (e.g., employees of large companies who may form industrial or commercial bowling

* One of these was to a California proprietor whose center was destroyed by an earthquake (A. 1207-10).

leagues), snack bars, lounges, nurseries, pro shops, rest rooms and vending machines (A. 66-68; A. 74-75).

Facts of record show that each dispossessed owner of the acquired BCOD center had to go out of business because Brunswick repossessed the basic lanes and pinsetters. Once Brunswick exercised that option the bowling utility of the center disappeared so the date of each Brunswick take-over constitutes a clear starting point for the running of damages. Consequently, the repossession of pinsetters and lanes (Brunswick repossessed some 23,000) forced the dispossessed proprietors out of the business of operating bowling centers. The Section 7 violation began at the precise moment of acquisition of the center itself, and at that moment no one other than Brunswick could replace the dispossessed operator. It should be noted that the choice to continue was Brunswick's. It could have without Clayton Act penalty repossessed the lanes and pinsetters, warehoused them and resold them at it did in most instances (D. Ex. 1; 1866).

It also should be emphasized that in the course of two lengthy trials Brunswick never offered any effective cross-examination of respondents' damages experts nor offered any testimony of its own as to a different measure of damages. The trial court described the dilemma posed by Brunswick's highly unorthodox trial tactics as follows (45a-46a):

> . . . [I]t is not error for the instructing Court to review the dollar amounts of the damages proposed by both plaintiff and defendant. . . . Reviewing the dollar amounts proposed by both sides was, of course, an impossible task in this case since defendant produced no damage evidence whatsoever. . . . It was admittedly difficult to maintain proper balance in the damages portion of the charge, but the source of the difficulty is obvious. Counsel choose the manner in which a case is to be tried, the court instructs on the law as it interprets it and the evidence adduced at the trial.

Summary of Respondents' Argument

1. The first question certified by the Court, as interpreted by Brunswick, suggests the erroneous major premise that Brunswick, the largest manufacturer of bowling equipment, acquired bowling center customers without any anticompetitive effects despite the strong contrary findings made by the trial judge in the equity aspect of the case, and the finding of violations made by the jury. The jury findings were made under instructions which necessarily presented the factual underlay of a conscious attempt by Brunswick to use its resources and its credit fulcrum to build a chain of bowling centers for itself by the device of first foreclosing on the important assets of the center—the automatic pinsetters and the removable lanes—and then later acquiring the various properties such as goodwill, licenses, leases, vending machines, bowling supplies and bars, which are the essentials of a modern bowling center. Following a two-step process Brunswick chose first to foreclose upon the debts owed to it by independent bowling proprietors. This foreclosure left no possibility of continued operation of the center by any independent proprietor and led to Brunswick's second step, the illegal acquisition of the center itself.

The question as interpreted by Brunswick also ignores Brunswick's continued operation of bowling centers at a loss in the competitive markets complained about. The losing operation of itself supports the finding of a violation of Section 7 and creates the necessary causal nexus for damages. Continued operation under these circumstances could not be legal even if we could conceive of a curious legal status in which the initial acquisition is unlawful but the continued existence of the center is lawful. This Court has frequently held to the contrary, at least inferentially, by

stating that divestiture is the normally expectable relief when an illegal acquisition takes place. Respondents contend that the facts found by the jury and court must necessarily be imported into the answer to the first question since otherwise the question becomes an abstraction which is not the product of and does not state the issues in this long-fought litigation.

Even were we to premise that the Court in certifying this question wanted to resolve a state of facts in which it believed that there was "no proof that the 'acquisition' resulted in any lessening of competition or monopoly", the answer to the question is "yes", since to hold otherwise would be to suggest that the mere retention of the centers itself constitutes a purge of the illegality which adhered to the acquisition. The question so read would suppose that the probability of anticompetitive effect sufficient to contaminate the acquisition never was realized and, consequently, the retention of acquisition affords no basis for damage claims. This view would encourage unlawful acquisitions and, contrary to the general principles of tort law, would leave the wrongdoer with the fruits of his wrong. In the very case at bar the third circuit thought that divestiture was inappropriate because of the ten-year lapse of time between the acquisitions and its decision. Thus, if the respondents were unable to recover damages and unable to cause divestiture of the "presence" with the potentiality of evil consequences, then Section 4 of the Clayton Act which gives relief to private persons would be rendered meaningless.

The injury caused to the respondents came from the following circumstances, all directly attributable to the status of Brunswick and its acts:

When a proprietor was in debt for expensive equipment Brunswick with its deep pocket, including its relationship as creditor to more than half of the bowling proprietors in the industry, could at its option

(a) forbear from foreclosing, as the record shows it did in some instances; or

(b) repossess the pinsetters and lanes, reselling them primarily in Japan and Europe (the record shows it did this in most instances); or,

(c) foreclose on the debt and instead of taking out the machines and lanes arrange for the acquisition of the bowling center properties generally and continue to operate them as an integrated supplier and bowling center proprietor (as the third circuit noted (9a n.5) Brunswick's chief manufacturing competitor AMF "never integrated forward into the retail end of the business so as to be in competition with its actual or potential customers").

When option (c) was used its direct consequence was that a debt-ridden proprietor was compelled to stop business through the foreclosure on the machines and lanes; at that moment in the normal sequence of events the surviving proprietors in the competitive market would have had their revenues increased by the bowling patronage of the center which had disappeared from the market. Respondents were damaged by loss of their fair shares of such revenues. When Brunswick chose to take the second step of bringing itself into the market it brought into the market an illegal presence which directly deprived the surviving proprietors of the increase of revenues which survivors would have enjoyed if Brunswick had not decided to operate a center at a

loss in the hope of future gain. In sum, the answer to question 1 is "yes", if the language of the question is to be considered as having any relationship to the context of the record built in this case.

2. The answer to question 2 is "no". As the trial court recognized, this underlying "Catch-22" proposition erroneously assumes that Brunswick may shift the burden of establishing that defense to respondents even though Brunswick's take-over of the bowling centers necessarily destroyed respondents' capabilities for showing what would have occurred to them "but for" Brunswick's repossession of its bowling equipment and acquisition of all the many other necessary adjuncts of a bowling center. Brunswick's failing business arguments must fall in face of a trial record that showed Brunswick itself destroyed all other viable business alternatives for the dispossessed center at the very moment it decided to dispossess.

Not only does Brunswick fail to meet the various prerequisites to assertion of the failing business defense as set forth in *Citizen Publishing Co.* v. *United States,* 394 U.S. 131, 89 S.Ct. 927 (1969) but also it cannot do so because it was Brunswick itself that caused the proprietors to "fail". It is fundamental law that one should not benefit from his own wrongdoing.

Finally, a recent sixth circuit decision, the gravamen of which we urge this Court to apply, holds that the failing business doctrine is not applicable to vertical as distinct from horizontal acquisitions. *United States Steel Corp.* v. *Federal Trade Commission,* 426 F.2d 592 (6th Cir. 1970). We argue not only that the doctrine has not in practice been applied to vertical acquisitions, but also that it should not be as a matter of sound public policy.

ARGUMENT

POINT I

Facts already of record establish that both the acquisition and later operation of Brunswick's bowling centers tended to lessen competition or to create a monopoly in violation of Section 7.

Turning to the facts of record rather than the hypothetical facts recited by Brunswick, question 1 must be answered in the affirmative. The anti-competitive forces found by the jury which made each Brunswick acquisition illegal under Section 7 in the first instance continued to be operative at all times after the acquisition. As we have shown in our Counterstatement of the Case, those anti-competitive forces resulted from Brunswick's "deep pocket" based upon its powerful integrated position in the bowling industry.

For example, Brunswick's continued operation at a loss of bowling centers over extended periods of time in and of itself represents an almost classic example of a Section 7 violation. In *Reynolds Metals Co.* v. *Federal Trade Commission,* 309 F.2d 223 (D.C. Cir. 1962), the acquisition by "the largest producer of aluminum foil in the world" of one of eight small converters of foil selling nationally to florist supply houses was held unlawful, principally because it allowed the "deep pocket" defendant to enter the retail market previously occupied by "relatively small" companies, and because the acquisition "opened the possibility and power to sell at prices approximating cost or below and thus undercut and ravage the less affluent competi-

tion" (309 F.2d at 229-30). Section 7 violations also were found on very similar facts in *United States Steel Corp.* v. *Federal Trade Commission,* 426 F.2d 592, 603-04 (6th Cir., 1970):

> . . . [T]he sheer size and financial resources of U. S. Steel visit non-competitive stabilizing forces upon the competitors of Certified and U.A.C. . . . No other cement or ready-mix company is in any position to compete with U. S. Steel's ability to extend credit, to exploit allied personal and financial ties in the building industry, to maintain and capture the accounts of others in the event of slackened demand, or to withstand temporary losses.

Section 7 was also violated in *Federal Trade Commission* v. *Procter & Gamble Co.,* 386 U.S. 568, 87 S.Ct. 1224 (1967), when "the largest manufacturer of household bleach" was acquired by "a large diversified manufacturer of soaps, detergents and cleansers" (386 U.S. at 570, 572, 87 S.Ct. at 1226-27). The FTC found that the acquisition created "the danger that Procter might underprice Clorox in order to drive out competition and subsidize the underpricing with revenues from other products" (386 U.S. at 575, 87 S.Ct. at 1228).

The operation of losing retail centers over extended periods of time was found to violate Sections 1 and 2 of the Sherman Act in *United States* v. *New York Great A. & P. Tea Co.,* 173 F.2d 79, 87 (7th Cir. 1949):

> . . . The record is replete with instances of deliberate reductions of gross profit rates in selected areas. Thus Area Y, at the desire of the policy makers of A&P, can be brought to aid in the struggle in Area X, which in numerous instances, as the record shows, sustained

> heavy net losses for periods extending over a substantial number of consecutive years. . . .
>
> On this record it seems apparent that the goal of the conspiracy to establish a two-price level at the buying level, which enables A&P to meet its competitors with an enormous advantage at the retail level, has been realized.

The same result was reached in *United States* v. *Grinnell Corporation,* 236 F. Supp. 244, 254 (D. R.I. 1964), *aff'd,* 384 U.S. 563, 86 S.Ct. 1698 (1966):

> . . . [B]ecause of their national operations, one or more of defendant alarm companies choose in some areas to operate at a loss. ADT's own counsel, in both brief and oral argument stressed, paradoxically, that it operated 20 *"deficit"* offices in cities with no other central station. Counsel seems not to appreciate that this fact is a strong point against defendants. It conclusively proves that defendants enjoy national monopolistic power which permits one of the conspirators to occupy local markets where no independent CSPS station would long function and to extend to each of them the combination's national monopolistic control. *Hardly any indicium of monopoly power is more persuasive than the continued capacity of the asserted monopolistic combination to sustain offerings at a loss either in particular areas or in particular services or products.* [Emphasis in original.]

The Section 7 violation here has as one of its characteristics the fact that Brunswick could subsidize these losing bowling centers only because of the deep pocket created by its highly integrated and profitable position in the bowling industry. Comparable integrated positions in particular industries have formed the bases for findings of Section 7 violations in numerous cases. See, for example,

Brown Shoe Co. v. *United States,* 370 U.S. 294, 82 S.Ct. 1502 (1962); *United States* v. *Kimberly-Clark,* 264 F. Supp. 439 (N.D. Cal. 1967); *United States* v. *Atlantic Richfield Company,* 297 F. Supp. 1061 (S.D. N.Y. 1969), *aff'd sub nom. Bartlett* v. *United States,* 401 U.S. 986, 91 S.Ct. 1233 (1971); *General Foods Corp.* v. *Federal Trade Commission,* 386 F.2d 936 (3d Cir. 1967).

In *Sanitary Milk Producers* v. *Bergjans Farm Dairy, Inc.,* 368 F.2d 679 (8th Cir. 1966), the court said (368 F.2d at 691):

> Sanitary's dominant [50%] position in the raw milk production was necessarily an element of influence in anything it might choose to do and demanded caution on its part when it embarked on processing.

Brunswick argues that there "was no lessening of competition and no monopoly" but instead "a mere substitution of competitors" (Brunswick Brief, p. 30). The district court disposed of these arguments in its opinion on September 17, 1973 (37a, 44a):

> The question of whether the plaintiffs proved their damages as a proximate result of the defendant's activities is one for the fact-finder. . . . There was ample evidence adduced at the trial to show how Brunswick's entry into the retail market lessened competition . . . .
>
> • • • • •
>
> Defendant argues that its corporate size and the fact that it is a manufacturer of bowling supplies are completely irrelevant to the case. This Court disagrees. Corporate size and status as a manufacturer are crucial to the question of whether competition was lessened. Defendant clings to the position that it should be considered as just another competitor in the retail bowling business. The law is to the contrary. Brown Shoe Co. v. United States, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962); Reynolds Metals Co. v. F.T.C., 114 U.S. App. D.C. 2, 309 F.2d 223, 229-30 (1962); Sanitary Milk Producers v. Bergjans Farm Dairy, Inc., 368 F.2d 679 (8th Cir. 1966).

The court of appeals said of Brunswick's argument about "mere substitution of competitors" (18a):

> Brunswick . . . focuses on the "substantially to lessen competition" language of § 7 and urges that no recovery can be had when activity in the marketplace has the effect of preserving a competitor and reducing consumer prices. But to focus on short run beneficial effects on consumer prices is to disregard the disjunctive "or tend to create a monopoly" clause in § 7, and to confuse injury to the public with injury to competitors. The public is not injured while a potential monopolist is vigorously competing to achieve monopoly power, though that injury may come later. Competitors, on the other hand, are injured in their business or property in a short-run period of predatory competition. Brunswick would permit recovery only when there is an injury to competition (such as market foreclosure) and an injury to the competitor.

The thrust of Brunswick's argument is that the continued presence of the acquired company may be legal even though the acquisition itself violated Section 7 as of the acquisition date. By some new physics of words, legal hydrostatics is overcome, and Brunswick supposes that an acquisition which was illegal at the moment when made becomes lawful the moment after. This Court has rejected a very similar argument by an antitrust defendant that Section 7 "is applicable only to the acquisition of stock and not to the holding or subsequent use of the stock," ruling instead in *United*

States v. *E. I. du Pont de Nemours and Co.*, 353 U.S. 586, 597, 77 S. Ct. 872, 879 (1957):

> . . . [The argument] misconceives the objective toward which § 7 is directed . . . . Its aim was primarily to arrest apprehended consequences of inter corporate relationships before those relationships could work their evil, which may be *at any time after the acquisition,* depending upon the circumstances of the particular case. . . . [Emphasis added].

Other decisions of this Court on divestiture premise that the continued presence of the acquired company of necessity is illegal. "[Divestiture] is an equitable remedy designed in the public interest to undo what could have been prevented had the defendants not out-distanced the government in their unlawful project." *Schine Chain Theatres, Inc.* v. *United States,* 334 U.S. 110, 128, 68 S. Ct. 947, 957 (1948). "[Divestiture] should always be in the forefront of a court's mind when a violation of § 7 has been found." *United States* v. *E. I. du Pont de Nemours and Co.*, 336 U.S. 316, 331, 81 S.Ct. 1243, 1252-53 (1961). "Complete divestiture is particularly appropriate where assets or stock acquisitions violate the antitrust laws. . . . Divestiture is a start toward restoring the pre-acquisition situation." *Ford Motor Company* v. *United States,* 405 U.S. 562, 573, 92 S.Ct. 1142, 1150 (1972). "Divestiture performs several functions, the foremost being the liquidation of the illegally acquired market power." *United States* v. *Greater Buffalo Press, Inc.*, 401 U.S. 549, 556, 91 S.Ct. 1692, 1697 (1971).

Applying these rulings by this Court on the appropriateness of divestiture, the district court held that "[i]n considering the propriety of [equitable] relief *the Court is mindful that the jury has already found injury and has*

awarded damages" (51a) (Emphasis supplied). The district court also expressly found that Brunswick's "opportunity to tap the deep pocket did not prove merely to be a potentiality" (55a), that Brunswick's vertical mergers represented "the actual danger that threatens both the bowling industry and these plaintiffs", and that "[t]his danger can effectively be removed only by rescinding the merger" (60a). It also made this finding (57a):

> . . . [N]ot only does this defendant possess the *potentiality* to substantially lessen competition (because of its dual capacity as a manufacturer, creditor and supplier of bowling equipment as well as a purchaser of the same) but also the jury has already found the *actuality* of this anti-competitive effect when it assessed its award of damages in favor of the plaintiffs. The very fact of the jury's finding, unless it was so erroneous as to demand a judgment n.o.v. which I have previously denied, is sufficient to support my present decision to order injunctive relief. [Emphasis in original].

These findings by the district court also bring in sharp focus the rule that "the evidence on a motion for judgment n.o.v. must be viewed by the appellate court in the light most favorable to the non-movant." *Western Hills Bowling Center, Inc.* v. *Hartford Fire Ins. Co.*, 412 F.2d 563, 565 n.2 (5th Cir. 1969). This rule is particularly pertinent here because the court of appeals literally retried the facts of the case without giving the slightest weight to the findings of the jury and the findings of the trial court.

The concept of an illegal status which by its very existence creates damages is not foreign to antitrust jurisprudence. In *F.T.C.* v. *Tyons Corner Regional Shopping Center,*—F.T.C.—, 3 CCH Trade Reg. Rep. ¶20,933 (1975), at 20,773, the Commission had before it the legality of "approval clauses" in shopping center leases giving to lessees,

among other things, the right to approve or reject prospective tenants in the shopping center. Respondent contended that in never having actually disapproved of a prospective tenant it should not be held in violation for mere acquisition and possession of the right to do so (at 20,773).

The Commission gave no weight to the respondent's protest that it was "being cited for the mere possession of unexercised market power", but distinguished between growing "in response to business imperatives" from "contracting for and retaining rights as broad as those it acquired" (at p. 20,776). Commissioner Dixon stated that the acquisition of approval rights was analogous to "the man who acquires a machine gun, arguing that he intends to use it only in self defense. While heavy armaments can doubtless be used for this purpose, so can many less dangerous weapons, and laws properly forbid the acquisition and possession of machine guns without waiting for a calamity" (at 20,776). The Commission did not urge that the possession of an acquired company is the equivalent of the possession of a machine gun, but emphasized that the nature of the violation made meaningless a distinction between illegality in the incipiency and illegality in the presence.

On the facts of the instant case this is particularly so because both the findings of the jury and of the trial court on the equity aspect of the matter were that the acquisition was contaminated by Brunswick's deep pocket financing. That contamination continued throughout the retention of the bowling centers and is evidenced by the fact that the bowling centers were operated at a loss for five years in Pueblo and Poughkeepsie and as many as three years in Paramus (Appendix A). The Poughkeepsie center was closed down by Brunswick some four years before trial, and

thus, post-operative period served as a laboratory demonstration of the propriety of the damage projections submitted by respondents.* A division among the survivors of the gross receipts of Dutchess Lanes of Poughkeepsie, New York upon abandonment by Brunswick, less adjustment for loss of bowlers, showed that the experts' formulae as applied in Pueblo and Paramus were remarkably accurate (Pl. Ex. 53, A. 1737). Such a showing surely corresponds with the antitrust damage test which is defined as the "but for" test as in *Schulman* v. *Burlington Industries, Inc.*, 255 F. Supp. 847 (S.D.N.Y. 1966), the proximate cause test as in *Billy Baxter, Inc.* v. *Coca-Cola Co.*, 431 F. 2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923, 91 S.Ct. 877 (1971), or the target area test as in *Karseal Corporation* v. *Richfield Oil Corporation*, 221 F. 2d 358 (9th Cir. 1955).

The problem presented by Question No. 1 is met in two ways. We have seen above (pp. 2-4, *supra*) that the major premise of the first question is faulty to the extent that its form does not acknowledge that a violation of Section 7 has taken place. We also answer the question affirmatively in the terms presented, notwithstanding the vast gulf which exists between the language of the question and the reality of the case. The continuing presence of Brunswick in the markets in which the competitive Treadway bowling centers were found was in itself wrongful since Section 7 not only strikes at the mere prohibited acquisition of a company, but also against the retention of the company by the acquiring company.

In *United States* v. *I T T Continental Baking Company*, 95 S.Ct. 926 (1975) (see also *Ford Motor Company* v.

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* The damages were based upon the demonstration of the profit yield per lane per bowling center including residual benefits such as the sale of drinks at cocktail bars, bowling balls, gloves, etc. (Pl. Exs. 11-15; A. 1623-27).

United States, 405 U.S. 562, 572-3, 92 S.Ct. 1142, 1149-50 (1972)), this Court had before it a consent order settling a Section 7 case which prohibited Continental from "acquiring" stock or assets of another baker. This Court recognized that the Commission could impose continuing penalties for violation of its order from the date of the contract of acquisition to the filing of the complaint, over the argument that the acquisition must be considered as a single violation. The Government contented that the word "acquiring" meant both purchase and retention of assets. Although the Court was interpreting language in a consent decree, it said as to the word "acquiring" (95 S.Ct. at 936):

> We must assume that the parties here used the words with the specialized meaning they have in the antitrust field, since they were composing a legal document in settlement of an antitrust complaint.
>
> We need not go beyond the Clayton Act itself to conclude that "acquisition" as used in §7 of the Act means holding as well as obtaining assets.

We have, then, in effect a ruling from this Court that the holding as to the acquisition continues its illegal status. It is not necessary for the retention of the acquired company to be used as a tool towards monopoly in order for the status to be wrongful. Mr. Justice Stewart in the *I T T Continental Baking Company* case, in part quoting from *F.T.C.* v. *Western Meat Co.,* 272 U.S. 554, 47 S.Ct. 175 (1926), stated (95 S.Ct. at 936-37):

> Thus, the framers of the Act did not regard the terms "acquire" and "acquisition" as unambiguously banning only the initial transaction of acquisition; rather, they read the ban against "acquisition" to include a ban against holding certain assets . . . "The order here questioned was entered when respondent actually *held and owned* the stock *contrary to law.* The Commission's duty was to prevent *continuance of this unlawful action* by an order directing that it cease and desist therefrom and divest itself of *what it had no right to hold.*" [Emphasis in original].

Moreover, in *I T T Continental Baking,* the Court relied, as we do, on *du Pont* (95 S.Ct. at 937):

> Similarly, this Court's opinion in United States v. du Pont, 353 U.S. 586, 77 S.Ct. 872, 1 L.Ed.2d 1057 (1957), rests upon the conclusion that "acquisition" can mean, and in the context of §7 of the Clayton Act does mean, both the purchase of rights in another company and the retention of those rights.

The nature of the violation being understood, respondents, to recover, need only show that the unlawful acquisition is causal of damages to it. Acquisition includes retention which equals presence.

When Brunswick chose to acquire a center after foreclosure instead of merely repossessing the chattels, it illegally filled the void which otherwise would have existed. Thus, we do not have a mere substitution of competitors, but a supplementation of competitors. Brunswick made itself a viable competitor under circumstances where, if it had merely chosen to foreclose on the chattels, there would have been no competitor at all since, as noted above, the costs for automatic pinsetters and lanes are the largest costs of a bowling center and it could not have been possible for a bowling center with so large a debt to replace these chattels had they been removed by Brunswick. (See pp. 15-16, *supra.*)

Otherwise stated, the mere presence argument is that Brunswick's presence in the three markets was proscribed by the statute and was unlawful. Brunswick was in effect disqualified and barred from operating bowling centers in

these three markets. That being so, respondents were hurt by the Brunswick presence without regard to the lessening of competition taking place through the various practices of Brunswick before and after the acquisition. When, in antitrust jurisprudence, the fact of injury has been established, a lesser test describes the extent and measure of damages. *Story Parchment Co.* v. *Patterson Parchment Co.*, 282 U.S. 555, 51 S.Ct. 248 (1931); *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 89 S.Ct. 1562 (1969); *Rea* v. *Ford Motor Company*, 497 F.2d 577 (3d Cir.), *cert. denied*, 419 U.S. 868, 95 S.Ct. 126 (1974). Any different rule would give to Brunswick the reward of its illegal conduct and would bar respondents from the reasonably to be anticipated profits which would have come to them upon Brunswick's foreclosure of the lanes and pinsetters. We submit that all talk of what might have happened if the business had continued in the original owner's hands, or if someone else had taken it over, is purely speculative since Brunswick, by its own conduct, made such alternatives unavailable. For these reasons, a remand to the trial court for further correlation of damages and continued illegal practices is inappropriate.

It is the holding on or the retention of the premises which constitute the continued illegal activity. In this context, it should be noted that the Brunswick-acquired centers in the pertinent market areas were often run at a loss for years after their initial acquisition. (See Appendix A.) It is not speculative to suppose that the illegal presence in the market of the Brunswick-operated centers has deprived the respondents of income. Brunswick's own records show that only the deep pocket company which it was found to be could have kept the acquired centers going, even were we to suppose that Brunswick did not foreclose on their physical assets (Pl. Ex. 46; A. 322, 1683-99). The answer to Question 1 then is "yes", but the facts of record

show that respondents' injury was due to more than the mere illegal presence of Brunswick.

The court of appeals gave abstract endorsement to the proposition that Brunswick violated Section 7 of the Clayton Act and that such violation was legally compensable under Section 4 of the Act (19a) but, nonetheless, mandated yet a third jury trial for the determination of already established facts of record. In particular, its holdings that Brunswick's continued presence as a competitor in its customers' markets was illegal and that injured horizontal competitors such as respondents can recover damages caused by the acquisition (10a-14a, 16a-19a) did not take into consideration the damage consequence necessarily flowing from that illegal presence in the market.

For all practical purposes the court of appeals ignored the fact that respondents fully met the traditional tests of damage causality since the damages shown resulted from Brunswick's operation of the acquired centers. *Radiant Burners, Inc.* v. *Peoples Gas Light and Coke Company*, 364 U.S. 656, 660, 81 S. Ct. 365, 367 (1961); *Schulman* v. *Burlington Industries, Inc.*, 255 F.Supp. 847, 851 (S.D.N.Y. 1966). In *Radovich* v. *National Football League*, 352 U.S. 445, 454, 77 S.Ct. 390, 395 (1957) this Court said:

> Congress itself has placed the private antitrust litigant in a most favorable position through the enactment of § 5 of the Clayton Act . . . In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws.

A requirement that respondents prove that the acquired company would otherwise have gone out of business flies in face of the record which shows that Brunswick itself put the centers out of business. (See pp. 21-22, *supra*.) It also

negates longstanding antitrust doctrine of this Court. To require speculative proof concerning such unprovable future events will allow wrongdoers to escape money damages solely because their wrongdoings made these damages impossible of ascertainment. *Bigelow* v. *RCA Radio Pictures Inc.*, 327 U.S. 251, 66 S.Ct. 574 (1946); *North Texas Producers Assn.* v. *Young*, 308 F.2d 235 (5th Cir. 1962); *Darden* v. *Besser*, 1957 Trade Cases ¶ 68,646 (E. D. Mich. 1956), *aff'd*, 257 F.2d 285 (6th Cir. 1958); *William H. Rankin Co.* v. *Associated Bill Posters of U.S.*, 42 F.2d 152 (2d Cir. 1930).

The proper test is if the damages to the plaintiff are causally connected with the illegal presence found to violate Section 7, they are proximate to the acquisition, Section 4 is satisfied, and the damages are recoverable. *Gottesman* v. *General Motors Corp.*, 414 F.2d 956, 961 (2d Cir. 1969); *Billy Baxter, Inc.* v. *Coca-Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923, 91 S.Ct. 877 (1971); *Schulman* v. *Burlington Industries, Inc.*, 255 F. Supp. 847 (S.D.N.Y. 1966); *Metropolitan Liquor Co.* v. *Heublein, Inc.*, 305 F. Supp. 946, 949 (E.D. Wisc. 1969).

Brunswick's suggestion that there may be no right to recover damages under Section 7 (Brunswick Brief, p. 27, n. 26) directly contradicts this Court's interpretation of Section 4 of the Clayton Act and its clear directive that any person injured in his business or property by reason of any antitrust violations may recover treble damages. As this Court has noted, this impetus to recover treble damages promotes "the public interest in vigorous enforcement of the antitrust laws through the instrumentality of private treble-damage action," *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329, 75 S.Ct. 865, 869 (1955), "the overriding public policy in favor of competition," and "the use-

fulness of the private action as a bulwark of antitrust enforcement." *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 139, 88 S.Ct. 1981, 1984 (1968). As was stated in *Bruce's Juices, Inc.* v. *American Can Co.*, 330 U.S. 743, 751-752, 67 S.Ct. 1015, 1019 (1947):

> . . . It is clear Congress intended to use private self-interest as a means of enforcement and to arm injured persons with private means to retribution when it gave to any injured party a private cause of action in which his damages are to be made good threefold, with costs of suit and reasonable attorney's fee.

Brunswick states at page 29 of its brief that "the principles espoused by the Third Circuit are a direct contradiction of the views expressed by the Second Circuit in *Gottesman*." Not so. Judge Feinberg in *Gottesman* v. *General Motors Corp.*, 414 F.2d 956 (2d Cir. 1969), placed the principal emphasis on "cause in fact", i.e., on whether a plaintiff can show an actual injury causally related to the violation. Indeed, the Second Circuit emphasized in *Gottesman* (414 F.2d at 961):

> Of course, plaintiffs cannot rest on a showing of a violation of Section 7; they must, as in private actions under other sections of the antitrust laws, prove that they have been injured by the violation.

The doctrine of *Gottesman* was applied, not flouted, when the Third Circuit stated (19a):

> We hold, then, that a horizontal competitor of a company acquired by a deep pocket parent in violation of § 7 can recover damages under § 4 if it shows injury in fact causally related to the violator's presence in the market, whether or not that injury flows from or results in an actual lessening of competition.

POINT II

The jury, trial court and third circuit properly rejected Brunswick's "Catch-22" argument that respondents' theory of damages actually proved Brunswick's "failing company" defense.

At Point II (pp. 32-38) Brunswick argues that because respondents' theory of damages premises that the acquired businesses would have failed and disappeared from the market had Brunswick not kept them alive, respondents' case now must be dismissed. This premise is said to demonstrate that the acquired centers were "failing companies" which fell within the failing company defense to acquisitions under the antitrust laws. The district court aptly labeled the argument a "neat 'Catch-22' proposition" and rejected it on grounds dispositive here (41a-42a):

> [Brunswick] argue[s] that, because plaintiffs' damage evidence was predicated on the fact that these centers would have gone out of business but for Brunswick's intervention, an admission has been made that the centers were in fact "failing companies". Much more is necessary however, for defendant's neat "Catch-22" proposition to be viable.
>
> One asserting the failing company defense must establish not only that the particular company is in irreversible failure but also that the acquisition in question was the sole alternative available. United States v. Greater Buffalo Press, Inc., 402 U.S. 549, 555, 91 S.Ct. 1692, 29 L.Ed.2d 170 (1971). Whether the companies acquired by Brunswick were in fact failing is somewhat doubtful from the record. Furthermore, there is almost no proof as to the "sole alternative" requirement. A defense is a matter of proof for the defendant. . . . Additionally, the jury received sufficient instructions on the failing company defense [A. 1469-70; A. 1501-02] and found it inapplicable.

Brunswick did not seriously press "failing company" before the court of appeals, devoting only one and a half of 58 pages of its court of appeals brief to a more limited argument that "a plaintiff cannot base a recovery on inconsistent factual positions" (p. 48). The court of appeals reaffirmed that "the failing company defense was a matter on which the defendant Brunswick had the burden of proof" (26a), and it rejected Brunswick's argument (27a).

Brunswick now asserts that "Interstate Lanes and Fair Lawn Lanes were sold as assets of a bankrupt parent corporation" (AIBC) and that the bankruptcy sale established that they were "failing companies" (Brunswick Brief, p. 37). The only evidence about Interstate and Fair Lawn was that they were profit-making centers (A. 249). The district court answered this contention as follows (41a-42a):

> Brunswick also contends that it was the only bidder prepared to purchase all of the assets of AIBC and that that purchase was, therefore, the sole open alternative in order to save that corporation from failure as a matter of law. There were, however, several other bidders at the sale who were prepared to purchase individual establishments. There is no proof in the record, nor has Brunswick made any argument, as to why individual purchases would not present an additional alternative.

Moreover, even as to Interstate and Fair Lawn the failing company defense was pleaded by implication only in Brunswick's answer (A. 32) and it was not pleaded at all

with respect to the Brunswick centers in Pueblo and Poughkeepsie. Brunswick's first express reliance on the "failing company" defense as to Interstate and Fair Lawn was reflected in its proposed jury instructions submitted during the first trial in 1970. Brunswick's proposed jury instructions on failing company at the second trial merely sought a directed verdict based upon the AIBC bankruptcy sale. Brunswick now argues for the first time that three additional "BCOD" centers—Dutchess, Belmont and Ten-Pin—were "failing companies" (Brunswick Brief, p. 37):

> . . . [T]he fact that the rescued bowling centers in this case were "failing companies" is established on the present record both by proof and by admission. . . . Dutchess Lanes, Belmont Lanes and Ten-Pin-On-The-Mall were centers from which petitioner had repossessed the lanes and pinsetters due to defaults in equipment payments, and the evidence is that petitioner never repossessed equipment unless the debtor was hopelessly insolvent.

Brunswick's arguments are based upon a misreading of a trial record which clearly showed that there were no alternatives left once Brunswick foreclosed its conditional bills of sale on the lanes and pinsetters of the independent proprietors who operated Belmont, Dutchess and Ten-Pin. When Brunswick foreclosed on the debt, it instantly eliminated all possibility that the debtor bowling center might be retained by the debtor or be acquired by anybody other than Brunswick. (See pp. 21-22, *supra*.)

Brunswick ignores the facts of record in its belated arguments that it is relieved of its burden of establishing the "failing company" defense because respondents supplied the necessary proof and because respondents should not be

permitted to maintain mutually contradictory positions in the same lawsuit (Brunswick Brief, pp. 36-37).

In 1965, there were numerous bowling centers in debt to Brunswick although, as we have seen, the downpayments on the pinsetters and lanes enabled Brunswick to recapture its manufacturing costs (pp. 15-16, *supra*). Brunswick made different determinations as to the method of handling different bowling center debtors. In some instances it entered into new credit arrangements with them; in some it merely forebore on collection of the debts; in many instances it foreclosed and repossessed pinsetters and lanes warehousing them for purposes of resale. In some instances, including the acquisitions complained of in this case, Brunswick foreclosed but, rather than repossessing the chattels, arranged for the acquisition of the bowling centers (D. Ex. 1; A.1866; A.878-82). In face of these options exercisable by Brunswick there is no way of knowing whether or not the acquired centers would have gone out of business had Brunswick not chosen to put them out of business. We do know that the approximately $700,000 cost of pinsetters and lanes is the major share of a bowling proprietor's investment. We do know that in Puerto Rico and in Florida Brunswick favored centers by forbearance for years, and that without the imperative to pay on their equipment investments these centers survived during the periods of forbearance (Tr. 557-58). Clairvoyance, however, would be needed to anticipate the future of any of the bowling centers acquired by Brunswick on the assumption that the acquisitions had not taken place.

It is incontestable that Brunswick put its customers out of business except in the instance of the bankruptcy sale in the Paramus area; as to the latter, the record is clear that not only were there possible alternative buyers but also that a chain of centers was sold (A. 476-78). There is evidence

that some of the members of the chain were solvent but that the bankruptcy ensued as to the gross operations of the chain (A. 249). Brunswick made no effort to sort these out or to show that centers acquired in the Paramus, New Jersey area individually were losing centers. Indeed, one of the AIBC centers was purchased by a stranger at the bankruptcy sale and almost immediately repurchased by Brunswick at a profit to the stranger (A. 478-48). The failing business doctrine is unavailable to Brunswick because, as in the tale of the self-made orphan who pleads for compassion on that ground, if the acquired center failed it was because, as we have seen, Brunswick itself occasioned the failure.

In tort law it is commonplace that when the tort feassor makes a substantial contribution to the injury complained of he may not recover. *United States Fidelity & Guaranty Co.* v. *McCullough,* 202 F.2d 269 (5th Cir.), *cert. denied,* 346 U.S. 868, 74 S.Ct. 108 (1953); *Raritan Trucking Corp.* v. *Aero Commander, Inc.,* 458 F.2d 1106 (3d Cir. 1972); *Freeman* v. *United States,* 509 F.2d 626 (6th Cir. 1975). In contract law where the promisor is prevented from living up to his promise by the promisee, the promisor is discharged from his obligation to perform the contract. *Anvil Min. Co.* v. *Humble,* 153 U.S. 540, 14 S.Ct. 876 (1894); *Chicago* v. *Tilley,* 103 U.S. 146 (1880); 12 *Am. Jur., Contracts,* §38 (1964). See also *Mutual Life Insurance Co.* v. *Armstrong,* 117 U.S. 591, 6 S.Ct. 877 (1886); *John Hancock Life Insurance Co.* v. *Willis,* 438 F.2d 1207 (6th Cir. 1971); *In re Sparks' Estate,* 172 Misc. 642, 15 N.Y.S. 2d 926 (Sur. Ct. 1939).

An antitrust violator may not escape money damages because its antitrust violations make it difficult for its victims to prove damages. *Bigelow* v. *RCA Radio Pictures, Inc.,*

327 U.S. 251, 264-265, 66 S.Ct. 574, 579-580 (1946); *Story Parchment Co.* v. *Patterson Parchment Co.,* 228 U.S. 555, 561-564, 51 S.Ct. 248, 250-251 (1931); *Eastman Kodak Co. of New York* v. *Southern Photo Materials Co.,* 273 U.S. 359, 379, 47 S.Ct. 400, 405 (1927).

Further, the cases cited by Brunswick have nothing to do with the "failing company" defense (Brunswick Brief, p. 36, n. 33) since they go only to the right of a party to rely upon facts actually proved by its opponent. All of this is away from the point since the controlling law is that the burden of proving the "failing company" defense is upon the party seeking to avail itself of it. *Citizen Publishing Co.* v. *United States,* 394 U.S. 131, 89 S.Ct. 927 (1969); *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 82 S.Ct. 1502 (1962); *International Shoe Co.* v. *Federal Trade Commission,* 280 U.S. 291, 50 S.Ct. 89 (1930). In order to meet that burden Brunswick must show these three elements formulated in *Citizen Publishing:*

(a) that the acquired company was "so depleted and the prospect of rehabilitation so remote that 'it faced the grave probability of business failure'" (394 U.S. at 137, 89 S.Ct. at 930); see also *Erie Sand and Gravel Co.* v. *Federal Trade Commission,* 291 F.2d 219 (3d Cir. 1961);

(b) that Brunswick was the "only available purchaser" (394 U.S. at 138, 89 S.Ct. at 931); see also *United States* v. *Diebold Inc.,* 369 U.S. 654, 82 S.Ct. 993 (1962); *Golden Grain Macaroni Co.* v. *Federal Trade Commission,* 472 F.2d 882 (9th Cir. 1972), *cert. denied,* 412 U.S. 918, 93 S.Ct. 2730 (1973); and

(c) that the prospects of reorganization were "dim or nonexistent" (394 U.S. at 138, 89 S.Ct. at 931); see also *United States Steel Corp.* v. *Federal Trade Commission,* 426 F.2d 592 (6th Cir. 1970).

Brunswick failed to establish any of these three elements. Brunswick's "failing company" defense at the trial level was confined to the two bowling centers of the AIBC Chain in the Paramus market. Brunswick's proof at trial showed that it was not the only available purchaser at the bankruptcy sale of the AIBC chain, but aggressively outbid other possible purchasers (A. 476-78). At the trial Brunswick defaulted on the issue of whether the prospects for reorganization were "dim or nonexistent", and, of course, neither respondents nor Brunswick had the opportunity of proving whether there were alternative purchasers for the other centers or whether the centers were on the verge of going out of business because Brunswick took those matters into its own hands and put them out of business.

The economic rationale of the "failing company" defense does not apply. The "failing company" doctrine arose in *International Shoe Co.* v. *Federal Trade Commission,* 280 U.S. 291, 50 S. Ct. 89 (1930). The purposes of making this exception were to protect against loss to stockholders and injury to the communities where plants were operated, interests hardly pertinent here since the acquisitions were by foreclosure or bankruptcy sale and since bowling centers have only a few employees (280 U.S. at 302, 50 S.Ct. at 93).

More importantly, on the level of assumption, contrary to fact, that the defense was properly made and available to Brunswick, there would be good economic reason not to apply the "failing company" doctrine here, even had the bowling centers gone out of business. It is not suggested that the failure of these businesses stemmed from bad management (in which case a substitution of good management by acquisition might have been justified),* but there is

* E.g., Low *The Failing Company Doctrine: An Illusive Economic Defense Under Section 7 of the Clayton Act,* 35 FORD. L. REV. 425, 442 (1967); but see Dooley, *Failing Company Doctrine: Recent Developments,* 47 TEX. L. REV. 1437 (1969).

indication to the contrary that failures resulted from a contraction of the bowling market. Brunswick argues that in the early 1960's there was a decline in demand for bowling and the record shows over-building of centers in relation to demand (see pp. 15-18, *supra*). In this situation some bowling operators should have gone under. It has been noted that (Dooley, *Failing Company Doctrine: Recent Developments,* 47 TEX. L. REV. 1437, 1440 (1969)):

> When failure is caused by overcapacity, the greater economic good . . . usually dictates dispersion rather than maintenance of facilities because preservation will only saturate an already satiated market [footnote omitted].

Brunswick, however, had other designs. As a giant deep pocket company it could afford to enter the market, prop up uneconomic operations and take business away from the remaining independent businessmen by operating at a loss. These subsidized loss operations lessened competition and tended toward monopoly. See: *United States* v. *New York Great A. & P. Tea Co.,* 173 F.2d 79, 87 (7th Cir. 1949). There is no difference between Brunswick's entry into the local markets to take business away from the others, thus transferring Brunswick's losses to them, and the fighting ship cases. *Thomsen* v. *Cayser,* 243 U.S. 66, 37 S. Ct. 353 (1917); *United States* v. *Hamburg Amerikanische P.F.A. Gesellschaft,* 200 Fed. 806 (S.D.N.Y. 1911), 216 Fed. 971 (1914), *rev'd on grounds of mootness,* 239 U.S. 466, 36 S. Ct. 212 (1916); Fugate, *Foreign Commerce and the Antitrust Laws* 403 (2d Ed. 1973).

The "failing company" doctrine was not developed to rescue giant integrated predators like Brunswick from vertical acquisitions, and the drafters of the 1950 amendment certainly never contemplated permitting corporate

carnivores to consume their customers. Its origins are quite different. The "failing company" doctrine seems to have appeared first on the antitrust scene in *American Press Ass'n* v. *United States,* 245 Fed. 91 (7th Cir. 1917), to have appeared again in *Aluminum Co. of America* v. *Federal Trade Commission,* 284 Fed. 401 (3rd Cir. 1922), *cert. denied,* 261 U.S. 616, 43 S. Ct. 362 (1923), to have been formulated explicitly in *International Shoe* v. *Federal Trade Commission,* 280 U.S. 291, 50 S. Ct. 89 (1930) and to have been refined to its present form in *Citizen Publishing Co.* v. *United States,* 394 U.S. 131, 89 S. Ct. 927 (1969); see *Comment,* 61 MICH. L. REV. 566 (1963); Connor, *Section 7 of the Clayton Act; the "Failing Company" Myth,* 49 GEO. L. J. 84 (1960).

Each of these cases involved a horizontal acquisition where the question at issue was whether one member in a competitive market could acquire another in the same market. Each case presented two alternatives: either absorption of the business of a company through business failure or absorption of its business through merger. Under either alternative the business was transferred to one or more companies already in the market; under either alternative there was a reduction in the market of one of the competitors. Thus merger and failure had the same economic effect in the case of a horizontal merger.

Merger and failure do not have the same economic effects in the case of a vertical acquisition, which is the case at bar. Brunswick was a supplier many times larger than any of the bowling centers in any of the regional bowling markets. Its acquisition of its customers, far from adjusting to the decline in demand by reducing the number of entities in the market in the same way as would business failure, represented the entry into a declining market of a new giant integrated concern ready, willing and able to absorb losses for years and to cause losses for everyone else.

(See pp. 10-14, *supra.*) Its officers made a conscious decision to enter the bowling center market as operators. It did not care that the effect was to transfer part of its own losses to the small, independent businessmen already in the bowling center market, whose resources were far less than Brunswick's.*

This is a totally different phenomenon from that envisaged by the formulators of the "failing company" doctrine. Where giant vertically integrated concerns seek to take advantage of the failing company doctrine to hide the cannibalization of their customers, the courts have stood as a bulwark to protect small businessmen. In *United States Steel Corporation* v. *Federal Trade Commission,* 426 F.2d 592 (6th Cir. 1970), the sixth circuit affirmed the Federal Trade Commission's rejection of the acquisition by U.S. Steel of a failing customer of cement. U.S. Steel sought to acquire Certified Industries, a company with between 6% and 12% of the ready mixed concrete market in the New York metropolitan area. While the court fell back on U.S. Steel's failure to satisfy the technicalities of the failing company doctrine, it stated (426 F.2d at 606):

> . . . [W]e find substantial evidence to support the Commission's finding that the anticompetitive consequences in Certified's continued existence as a giant vertically integrated concern would deteriorate competitive conditions in the concrete and cement industry more than its elimination by business failure.
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> • • • • •
>
> . . . [T]he reduction of the number of ready-mix competition by one may be far less anticompetitive than Cer-

* Compare criticism of failing company acquisition which increases share of industry leader. Low, *The Failing Company Doctrine: An Illusive Economic Defense Under Section 7 of the Clayton Act,* 35 FORD. L. REV. 425, 428 (1967).

> tified's continued existence as a vertically integrated giant . . . The presence of a vertically integrated company in a concentrating industry serves to dampen the vigor of competition by non-integrated concerns. Also potential entrants, as well as non-integrated ready-mix producers, will be less likely to challenge the pricing practices of a concern with resources so many times larger than their resources as is the U.A.C.-Certified-U.S. Steel complex.

In *United States Steel Corp.* v. *Federal Trade Commission,* 426 F.2d 592, 606-67 (6th Cir. 1970) the court spoke with approval of the F.T.C.'s view that the circumstances of a failing company were merely one factor to be taken into account in determining the legality of a merger, rather than an absolute defense. The Commission had taken the position (426 F.2d at 606):

> that the "failing company doctrine" does not grant absolute immunity under section 7 where, in view of an acquisition's anticompetitive effects, the probable "harm to individuals" and "injury to the communities where its plants were operated" is not so serious that the consummation of the acquisition is in the "public interest."

Commentators have pointed out that blind application of the failing company doctrine may be more harmful than the situations it was intended to cure. Low, *The Failing Company Doctrine: An Illusive Economic Defense Under Section 7 of the Clayton Act,* 35 FORD. L. REV. 425, 428 (1967); *Comment,* 61 MICH. L. REV. 566, 577-578 (1963).

The danger of permitting Brunswick to integrate forward in this manner is even greater in this case than ordinarily. Brunswick is the supplier of lanes and pinsetters to over 50% of the bowling centers throughout America.

This position gives it enormous financial leverage over those competitors who must make payments to it monthly under their security agreements with Brunswick. Brunswick did not hesitate to foreclose on the centers it acquired in the three markets involved here. Brunswick placed respondents' centers on a cash basis. Brunswick put the acquired centers out of business entirely. To permit such a giant predator, by means of acquisition, to roam the fields in which are found the tiny competitors in the bowling center business would represent a surrender of all hope of genuine competition. *United States* v. *Grinnell Corp.,* 236 F. Supp. 244 (D.R.I. 1964), *aff'd,* 384 U.S. 563, 86 S. Ct. 1698 (1966); *Reynolds Metals Company* v. *Federal Trade Commission,* 309 F.2d 223 (D.C. Cir. 1962).

CONCLUSION

Respondents respectfully submit that the Court should resolve the two certified questions by accepting respondents' position. Respondents urge the Court also to push aside any technical concepts of review in order that a speedy disposition of this ten-year old litigation may now be reached. Respondents' petition for certiorari (No. 75-770) has not been ruled on by this Court. Presumably it has been held in abeyance pending the Court's disposition of the two questions as to which certiorari has been granted.

Respondents urge that the Court attempt to bring about a speedy and just result by ruling upon respondents' petition for certiorari without delay. Should this be done, we suggest with great respect that the first question presented in respondents' petition no longer requires resolution

since it is subsumed by the first question certified and already presented to the Court for ruling. As to the others which are reprinted hereafter, we hope that this Court will devise an order accelerating their resolution.

Surely the appellate process of this Court must be malleable enough so that justice may be accomplished without so much delay that the dearest interests and aspirations of people are not ultimately consumed by rust. This litigation began in 1966 and twice had to work its weary way through the trial calendars of the District Court for the District of New Jersey. After the verdict of May 11, 1973, it took until August 29, 1975 for an opinion to come from the Court of Appeals for the Third Circuit. Should remand be affirmed by this Court some time in the winter of 1976-77, it is not anticipated that the case can be reached for trial in the normal course until 1978. Should appeals bring this case back to this Court, it is quite reasonable to suppose that the matter would not be decided until 1980.

We urge the Court to consider the Third Circuit's decision in light of this Court's directive in *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, 82 S. Ct. 1404, 1409 (1962):

> The Court of Appeals was, of course, bound to view the evidence in the light most favorable to [the prevailing party] and to give it the benefit of all inferences which the evidence fairly supports, even though contrary inferences might reasonably be drawn. . . .

In respect of questions relating to the propriety of the damage findings, we remind the Court that the court below assumed that Brunswick right raise issues as to damage findings even though it had defaulted in presenting rebuttal evidence, and failed to disturb the credibility of the damage witnesses in any way (45a-46a).

We also address the Court's attention to the observations of the venerable Judge Edward Weinfeld in *United States* v. *Standard Ultramarine & Color Co.*, 137 F. Supp. 167 (S.D.N.Y. 1955), "this auxiliary policing method did not altogether fulfill its purpose" [referring to private antitrust actions] because small plaintiffs "able and willing to assume the staggering cost of litigation were frequently worn out by their opponents by sheer attrition" (137 F. Supp. at 171). We respectfully submit that this Court should dispose of respondents' questions two to nine, inclusive, by setting them down for speedy hearing. They are:

> (2) Assuming that petitioners may be entitled to money damages for such violation [of Section 7], did the district court improperly instruct the jury concerning the measure of damages in such a way as to require a new trial?
>
> (3) Is not a private antitrust plaintiff entitled to the injunctive relief of divestiture under Section 16 of the Clayton Act against the illegal market presence of a respondent who has violated Section 7 of that Act by acquiring one of petitioner's horizontal competitors, notwithstanding that the threatened petitioner has survived after respondent's acquisition of that competitor?
>
> (4) Must an order for equitable relief (including divestiture) issued by a district court pursuant to Section 16 of the Clayton Act, on the basis of evidence previously presented to a jury in the same court, be set aside solely on the grounds that the trial judge erroneously instructed the jury on the issues of liability and damages under Sections 7 and 4 of that Act, notwithstanding the recognition by the court of appeals that it was "obliged . . . to review the district court's findings of fact by a different standard"?

(5) Must petitioners re-litigate the question of whether, under Section 7 of the Clayton Act, an acquired company was "engaged in the flow of interstate commerce" pursuant to decision of this Court in *United States* v. *American Building Maintenance Industries,* 95 S. Ct. 2150 (1975), solely on the grounds that this decision was rendered after trial and without regard to the evidence of such engagement as actually presented to the jury?

(6) When the trial record demonstrates that an acquired company would have gone out of business but for its acquisition by respondent, are petitioners' damages resulting from lost profits under the "but for" test measured from the time of the acquisition or from an indeterminate later time based upon the assumption that the acquisition never occurred?

(7) Does a jury's rejection of the "failing company" defense and the requirement that the acquiring company prove that it was the only available buyer for the acquired company represent, as a matter of law, a corollary finding that the acquired company was not effectively and inevitably out of business at the time of its acquisition?

(8) When respondent refuses to rebut petitioners' proof of a range of damages, on the stated grounds that respondent denies liability and that damages are thus academic, does the trial judge err in instructing the jury that if it first finds respondent liable, it must find damages for petitioners within that range as proven by their five expert witnesses, when the trial judge has also properly instructed the jury on its prerogatives and duties as to the credibiiity of, and mutual corroboration among, such witnesses?

(9) In the face of uncontroverted evidence as to damages accepted by the jury, is it required that the jury be free to speculate on the precise quantum of damages after it has determined that respondent violated Section 7 of the Clayton Act and that petitioners were causally injured thereby?

Alternatively, we respectfully ask the Court to reverse so much of the decision of the Third Circuit as requires remand for further trial and to reinstate the verdict of the jury and the findings and the judgments of the trial court.

Dated: New York, New York
July 30, 1976

Respectfully submitted,

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APPENDIX

APPENDIX A

This tabulation extracts P & L figures found on Plaintiffs' Exhibit 47 (1) as computed by BCOD ("BCOD Profit"), and (2) as computed for an independent proprietor who is a Brunswick customer ("Indep't Profit").

BCOD Center	1965 BCOD Profit	1965 Indep't Profit	1966 BCOD Profit	1966 Indep't Profit	1967 BCOD Profit	1967 Indep't Profit	1968 BCOD Profit	1968 Indep't Profit
Belmont	($25,789)	—	($ 4,241)	($25,320)	$ 1,264	($ 17,026)	($ 20,075)	($ 33,346)
Dutchess	(5,192)	—	(30,755)	(54,784)	(28,776)	(52,168)	(23,279)	(46,630)
Interstate	(31,742)	—	11,392	(12,531)	34,581	10,539	61,475	25,748
Fair Lawn	12,022	—	34,870	15,976	46,713	26,876	39,083	19,432

BCOD Center	1969 BCOD Profit	1969 Indep't Profit	1970 BCOD Profit	1970 Indep't Profit	1971 BCOD Profit	1971 Indep't Profit	1972 BCOD Profit	1972 Indep't Profit
Belmont	($21,820)	($33,710)	($20,213)	($31,908)	$ 6,328	($ 3,202)	$ 18,253	($ 7,585)
Interstate	73,144	28,760	90,682	45,698	142,567	104,757	123,268	90,076
Fair Lawn	53,288	34,324	77,723	58,049	85,350	67,194	73,337	56,335
Ten-Pin	(2,564)	—	(8,131)	(42,540)	6,945	(27,106)	(2,036)	(40,012)
Lodi	—	—	(27,013)	—	5,030	(47,670)	(46,499)	(98,477)

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S REPLY BRIEF.

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—

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

—

PETITIONER'S REPLY BRIEF.

———

INTRODUCTION.

The Court granted certiorari in this case on two questions only. The first question is whether the mere continued presence in the market of bowling centers allegedly "acquired" in violation of Section 7 of the Clayton Act can afford a basis for competing bowling centers to recover damages under Section 4 of the Act when there is no proof

that the "acquisitions" resulted in any lessening of competition or monopoly. The second question is whether the "failing company" principle requires dismissal of a treble-damage action which is based on an alleged Section 7 violation where the plaintiffs' entire damage theory rests on the premise that the "acquired" businesses would have failed and disappeared from the market had the defendant not kept them alive by making the challenged "acquisitions." These questions are raised by the record and addressed by the Court of Appeals in its decision in this case. We have analyzed, explored and discussed them fully in our main brief.

We give this emphasis to the two questions presented because the Brief for Respondents obdurately fails to address them.

I.

RESPONDENTS HAVE FAILED TO ANSWER THE FIRST OF THE QUESTIONS PRESENTED.

By far, the largest portion of respondents' 57-page brief consists of a lengthy diatribe against petitioner, apparently in an effort to rehash the question whether petitioner's "acquisitions" violated Section 7 of the Clayton Act,[1] despite the fact that this question is not before the Court. Respondents take unwarranted liberties with the record and, with unfelicitous lack of restraint, characterize petitioner as a "giant integrated predator" (Brief for Respondents, p. 49) and a "corporate carnivore" (Brief for Respondents, p. 50) which engaged in "the cannibalization of [its] customers" (Brief for Respondents, p. 51).[2]

To justify their distorted presentation, respondents represent that they are stating "facts found by the jury and the trial court sitting in equity" (Brief for Respondents, p. 7 *et seq.*). This is simply not so. In presenting their distorted version as "facts found by the jury and the trial court sitting in equity", respondents totally disregard these highly significant points:

(a) the Court of Appeals set aside those portions of the jury's verdict which were in respondents' favor

1. The heading on Point I of the argument section of respondents' brief demonstrates this quite dramatically. It reads:

"Facts already of record establish that both the acquisition and later operation of Brunswick's bowling centers tended to lessen competition or to create a monopoly in violation of Section 7" (Brief for Respondents, p. 27).

2. Inasmuch as respondents' distortions of the record relate to matters which are outside the questions presented to this Court, we will not encumber the body of this Reply with a discussion or analysis of those distortions. However, since we do not wish to permit respondents' assertions to go unchallenged, we are setting forth in an Addendum to this Reply a discussion of, and response to, some of the more flagrant distortions.

because the matter had been presented to the jury on erroneous legal instructions (Pet. App. pp. 20a-23a);[3]

(b) "the trial court sitting in equity" did not make independent factual determinations, but, instead, relied almost exclusively on the jury verdict (Pet. App. p. 57a), and the equitable relief ruling was likewise set aside by the Court of Appeals, *inter alia*, because it was based on a jury verdict "tainted by erroneous legal instructions" (Pet. App. p. 28a);[4]

(c) the jury rejected respondents' assertion that petitioner violated Section 2 of the Sherman Act (A1543) and, in so doing, necessarily rejected also the notion that petitioner had engaged in the predatory activities and "deep pocket" abuse charged by respondents; and

(d) respondents' Section 7 claim was submitted to the jury on a theory which permitted the jury to find a Section 7 violation and award damages without finding that petitioner had engaged in any predatory conduct or "deep pocket" abuse (A1499-A1501).

When he submitted the Section 2 ("monopolization" and "attempt to monopolize") claims to the jury, the trial judge specifically charged the jury that it could conclude that there was an "attempt to monopolize" if it found that petitioner was employing "methods, means and practices which . . . create the reasonable probability that monopoly will be achieved" (A1492), or if it found that petitioner had taken "steps toward acquiring a dominant position in the market" (A1492). The jury was instructed that it could

3. The correctness of this ruling by the Court of Appeals is not presently before this Court.

4. The correctness of this ruling by the Court of Appeals also is not presently before this Court.

conclude that there was an "attempt to monopolize" if it found that petitioner was operating bowling centers at a loss "in order to have a dominant position in the operation of bowling centers" (A1493), or was making sales below cost "for purposes of eliminating a competitor or of forcing sales by a competitor or competitors at comparable prices" (A1493). And, in connection with these claims on which it found **for**[5] petitioner, the jury was specifically instructed that it should "properly consider, in your deliberations, whether or not Brunswick's 'deep pocket' enabled it to enter the bowling center market which, the evidence shows, was previously occupied by relatively small companies and whether or not that ability opened the possibility and power to sell at prices approximating cost or below and thus to undercut and ravage the less affluent competition" (A1494). The trial judge further instructed the jury in connection with the Section 2 claims (A1496):

> "If you find that Brunswick's dominant position in the bowling industry conferred upon its BCOD bowling centers monopoly advantages not enjoyed by competing independent proprietors, then you may find that Brunswick monopolized or attempted to monopolize the bowling center business.
>
> "You may conclude that such monopoly advantages exist from evidence showing that Brunswick's centers, unlike their independent competitors, paid no interest on its lanes and pinsetters and incurred depreciation charges which were approximately half of those incurred by independent proprietors.
>
> "You should also consider the evidence which shows that Brunswick's centers, unlike their independent competitors, could and did underwrite the

5. Wherever boldface is used in this brief, the emphasis is ours.

costs of inducements for its BCOD centers such as free bowling, trips to Europe and giveaways such as turkeys, liquor or trophies; and the cost of installing new A-2 automatic pinsetters or converting A-1 pinsetters to A-2's."

And again (A1498):

". . . If you find that as a result of Brunswick's operation of bowling centers at a loss in competition with plaintiffs' centers, or as a result of Brunswick's providing special inducements in the form of reduced prices, prizes, and the installation of A-2 automatic pinsetters, that one or more of such bowling centers of plaintiffs has been excluded in whole or in part from the market, then you may find that Brunswick was using its monopoly power to exclude the competition of plaintiffs' bowling centers, and illegally to maintain a monopoly."

Yet, despite these instructions, the jury found **for** petitioner on the claims of monopolization and attempt to monopolize (A1543). In reaching this decision, the jury necessarily **rejected** respondents' claims of predatory conduct and "deep pocket" abuse.

The Section 7 verdict in respondents' favor was based not on a jury determination that petitioner had engaged in predatory conduct or "deep pocket" abuse, but rather on consideration of factors totally unrelated to these issues. This is clear from the trial judge's Section 7 charge (A1499-A1500):

"If Brunswick's acquisition of Belmont Lanes substantially lessened competition, then Brunswick violated Section 7 by acquiring Belmont Lanes. You may consider that Brunswick describes itself as 'Number One in Bowling' and is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers. Although no precise figure exists to measure the extent of the market which must be occupied in order for competition substantially to be lessened by an acquisition, I charge you that any percentage of the market achieved by Brunswick in the Pueblo area beyond an insubstantial amount, say beyond 10 to 15%, may be sufficient for you to conclude that competition has substantially been lessened. Consequently, you properly may conclude that Brunswick by the acquisition of Belmont Lanes violated Section 7 of the Clayton Act because Brunswick through that acquisition obtained allegedly more than 20% of the Pueblo, Colorado, bowling center market." [6]

Thus, what the jury was told to take into account in determining the Section 7 claims was (a) that petitioner "describes itself as 'Number One in Bowling' ", (b) that petitioner "is the largest manufacturer of bowling supplies and equipment as well as being the banker for its bowling center customers" and (c) that by virtue of an "acquisition", petitioner achieved a certain percentage of the market. Respondents' charges of predatory conduct and "deep pocket" abuse played no part in the jury's determination that Section 7 had been violated.

The Court of Appeals found that the Section 7 jury charge was "virtually a directed verdict" against petitioner (Pet. App. p. 21a) and wholly improper, and, accordingly, ordered a new trial. However, the Court of Appeals also held that, although the jury charge was erroneous, a prop-

6. Virtually identical instructions were given respecting the Poughkeepsie and Paramus markets (A1500-A1501).

erly-instructed jury might have found, on the present record, that petitioner had violated Section 7 (Pet. App. pp. 10a-14a).

We disagree with this latter conclusion, and continue to believe that, on the record in this case, even a properly-instructed jury could not find a violation of Section 7. However, in presenting the first question to this Court we have assumed *arguendo* that a properly-instructed jury might have found that petitioner's "acquisitions" violated Section 7, *i.e.* that the "acquisitions"[7] had the requisite potential substantially to lessen competition (See Brief for Petitioner, p. 16, n. 14).[8] The issue whether a jury might have so found is **not** before this Court.

Rather, the issue here relates to whether respondents sustained any compensable injury and damage. Respondents argued in both the District Court and the Court of Appeals that all they had to show on the question of injury and damage was a loss of anticipated profits resulting from the mere continued presence in the marketplace of the "acquired" bowling centers as competitors of re-

7. As we pointed out in our main brief, we believe that there were no "acquisitions" in this case within the meaning of Section 7 (Brief for Petitioner, p. 14 n. 10).

8. The instant case is quite unlike the typical "deep pocket" case. This is not a case where a large company invested a substantial amount of new money in a planned expansion. Here, petitioner, with its back to the wall, entered the business of operating bowling centers for the purpose of salvaging something from its defaulted equipment receivables. As the Court of Appeals recognized, petitioner undertook the operation of bowling centers only when there was a "reasonable prospect that a positive cash flow would result" (Pet. App. p. 8a), *i.e.* that cash would flow from the center to petitioner and not the other way around. Moreover, as the Court of Appeals recognized, petitioner "was already in serious financial difficulty" when it entered this business (Pet. App. p. 8a). Petitioner's "deep pocket" was nearly empty at the time of the "acquisitions". Petitioner was itself in danger of bankruptcy (A1364).

spondents' centers. On the other hand, petitioner argued, in both courts, that this proposition was erroneous, and that, if a private action for damages based on a violation of Section 7 were to be allowed, recovery must be limited to those "damages" caused by the evils which Section 7 was designed to prevent, *i.e.* an actual lessening of competition or a monopoly. The Court of Appeals for the Third Circuit rejected this argument of petitioner and accepted instead respondents' contention that "a horizontal competitor of a company acquired by a deep pocket parent in violation of § 7 can recover damages under § 4 if it shows injury in fact causally related to the violator's presence in the market, **whether or not that injury flows from or results in an actual lessening of competition**" (Pet. App. p. 19a). The first of the two questions on which certiorari was granted by this Court challenges this ruling by the Court of Appeals and it is that question that we have discussed at pages 22 through 31 of our main brief.

Respondents have studiously avoided addressing the question. First, they launch into an unwarranted harangue against petitioner in order to dramatize what is assumed *arguendo*, that is, that a properly-instructed jury might find, on the present record, that petitioner's "acquisitions" violated Section 7 (Brief for Respondents, pp. 2-22, 27-30). Respondents' argument on this point is totally irrelevant.

Next, respondents argue that there was sufficient evidence in the record to show that petitioner's "acquisitions" did in fact result in a substantial lessening of competition (Brief for Respondents, pp. 30-33). There are two answers to this contention. First, it is clearly wrong; there is no evidence of any lessening of competition, let alone a substantial one. All that respondents can point to in an effort to support their assertion is a conclusory state-

ment by the trial judge (Brief for Respondents, pp. 30-33).[9] But such a conclusory statement is not evidence.

Second, respondents did not attempt to attribute any injury or damage to any lessening of competition. If there is one thing in this case which is clear beyond any possible doubt, it is the basis of respondents' damage claims. Respondents assert that they were injured by the mere continued presence in the market of the "acquired" bowling centers and claim that their "damages" consisted of the additional income that would have come their way had the "acquired" centers ceased operations. Respondents' witnesses testified to the amounts of additional bowling revenues which their centers would have received if the competing centers operated by petitioner had been closed, and then computed what those additional revenues would have yielded respondents' centers in additional net income (A366-A367, A377-A404, A511-A513, A565-A566, A571, A586, A852-A855). Those calculations had no relationship whatever to any lessening of competition or to whether petitioner operated its "acquired" centers oppressively or benignly, frugally or lavishly, at a loss or at a profit, with low costs or with high costs. Not the slightest effort was made by respondents to show how their profits would have been affected if, in the operation of its centers, petitioner had engaged in some practice from which it refrained or had not engaged in some practice which it pursued, or if the centers had been operated by someone other than petitioner. Respondents' complaint was simply that the centers were being operated, rather than being closed. The mere continued presence in the marketplace of the "acquired" centers was what was asserted by respondents to give rise to their claim of injury and damage, and it was that claim which the Court of Appeals found to be sufficient to get respondents' case to a jury.

9. In his opinion denying petitioner's post-trial motions, the trial judge made the bald statement that "there was ample evidence adduced at the trial to show how Brunswick's entry into the retail market lessened competition" (Pet. App. p. 37a), but the trial judge cited no evidence to support that statement.

Thus, the first question which petitioner has presented to this Court is not "a hypothetical question" as respondents would have the Court believe (Brief for Respondents, p. 31). Rather it is a very real question the resolution of which determines whether this case must be tried a third time or, as we believe, should be dismissed outright.

The question presented is one which has captured the attention of an eminent scholar in antitrust law. In the April 1976 issue of the Harvard Law Review, Professor Phillip Areeda says this about respondents' theory of injury and damage and the Court of Appeals decision in the instant case:

> "For purposes of this discussion, it will be assumed that the plaintiff could prove his claim that, in the absence of the challenged merger, the acquired firms would have failed . . . . What is at issue here is the proposition, accepted by the court [of appeals], that the plaintiff could recover damages resulting from the competition of those firms, notwithstanding the absence of any impropriety in the manner of that competition. Such a proposition ignores the rationale for finding substantive liability in the case. Defendants were found in violation of section 7 because of the possibility of future anticompetitive activity or future 'lessening of competition'—not because of their current behavior. Thus, the plaintiff's injuries were not at the core of the rationale for condemning the defendant's acquisitions. The antitrust laws, section 7 included, are aimed at preserving competitive activity, and that is precisely what Bruns-

wick's acquired firms were engaged in. Perhaps the point is clearest when one notes that the competition Treadway encountered was in no way related to the illegal nature of the merger, which rested on the identity of the acquiring firm. Had the centers been taken over by a different parent—for example, one without a 'deep pocket'—the merger might have been legal, but Treadway would still have faced competition. Since its injury was therefore not caused by the illegality, the plaintiff was not 'injured . . . by reason of anything forbidden in the antitrust laws.' Treadway is, therefore, not eligible for damages." Areeda, **Antitrust Violations Without Damage Recoveries,** 89 Harv. L. Rev. 1127, 1132-1133, (1976) (footnotes omitted).

See also **Purex Corp., Ltd. v. Procter & Gamble Co.,** 1976-2 Trade Cases ¶ 60,985 at p. 69,373 (C. D. Cal. 1976), where Judge Gray also rejects the reasoning of the Court of Appeals in the instant case.

As Professor Areeda notes, the "target area" cases provide an interesting contrast here:

> "Unlike the plaintiffs in the target area cases, the *Treadway* plaintiff clearly was a party whom the antitrust laws were intended to protect from certain injuries; this, however, was not that kind of injury, since it was one that would occur 'whether a merger is legal or illegal.' As the target area cases suggest, a defendant is not liable for every injury resulting from his violation; he is only liable for the anticompetitive ones." 89 Harv. L. Rev. at 1133-1134, n. 36.

As for the statement by the Court of Appeals (quoted at page 31 of the Brief for Respondents) that the beneficial effects on consumer prices of competition from the

"acquired" centers should be ignored because "to focus on short run beneficial effects on consumer prices is to . . . confuse injury to the public with injury to competitors" and because "competitors . . . are injured in their business or property in a short-run period of predatory competition" (Pet. App. p. 18a), Professor Areeda responds:

> "The court's position is unpersuasive. First, as section 7 is based upon a probability of future injury, and not upon any present injury, improper behavior may never occur—there may never be a 'short-run period of predatory competition.' Second, the plaintiff never established that its position had worsened—it argued only that without the merger it would have been better off due to the failure of its competitors. It would be stretching beyond credibility the words 'injur[y] in . . . business or property' to include within their terms this kind of disappointed expectation of windfall profit.
>
> "Third, it is the court, not the defendant, that has 'confuse[d] injury to the public with injury to competitors.' As the Supreme Court said in *Brown Shoe,* section 7 was enacted for 'the protection of *competition,* not *competitors.*' Thus, as long as there is no anticompetitive activity, the fact of injury to a competitor is *not* a concern of the antitrust laws. To argue as the court does is to stand the public interest on its head and to suggest that the public would be better off if the plaintiff found itself without competition.
>
> "Fourth, the court's argument confuses predation with competition. There is no harmful economic effect from 'vigorous competition'; harm arises only from predatory competition. Indeed, one who ob-

tains a monopoly merely by vigorous competition is acting entirely properly. Moreover, if predation does occur, the plaintiff is not 'preclude[d] [from] recovery . . . until he has been driven out of business.' Predation violates Sherman Act section 2. The plaintiff may obtain an injunction against its continuation as well as any damages suffered up to that point.

"Finally, and most importantly, damages are an anticompetitive remedy here. This damage award warns a merged firm that it should avoid vigorous competition that will reduce rivals' profits and thereby increase the damages it may eventually have to pay if those rivals challenge the merger with a treble damage action. That is hardly desirable. If the merged firm does not belong in the market because of fears about its potential future activities, then it should either be prevented from initially achieving the acquisition or forced to divest after the fact . . . . [T]o hamstring its efforts to compete effectively [when it is in the market] is to ignore the values the antitrust laws were designed to protect." *Id.* at 1134-1136 (footnotes omitted).

There is nothing in respondents' brief which is responsive either to the reasoning set forth at pages 22 through 31 of our original brief or to Professor Areeda's analysis.

To assert, as respondents do, that petitioner's continued presence in the market was "wrongful" and "illegal" (Brief for Respondents, pp. 35-37) is to beg the question. The continued existence of the bowling centers was not illegal; the only thing that might have been "illegal" was petitioner's "acquisition" of those centers. But it was the continued existence of the centers themselves—not petitioner's "acquisition" or manner of operation of the centers—which gave rise to respondents' only claims of injury and damage. Nowhere do respondents attempt any analysis which would refute the reasoning of the cases set forth at pages 27-29 of our main brief, a reasoning capsulized in **Dole Valve v. Perfection Bar Equipment, Inc.,** 311 F. Supp. 459, 462 (N. D. Ill. 1970), where the court said:

"To recover damages under Section 7 of the Clayton Act, a complainant must be able to show that he 'suffered some special damage to his business as a direct and proximate result of the acquisition.*** the injury must result from the lessened competition or monopoly itself.' . . . Proof that a competitor made sales after it was unlawfully acquired by another, even if the complainant competed for those sales, is not evidence that the sales were the 'direct and proximate result' of the unlawful acquisition. If such were the rule, corporations violating Section 7 would become insurers of the commercial success of their competitors. This is not the law."

Indeed, instead of setting forth an analysis which attempts to refute the propositions set forth in the cases cited by petitioner or to justify the conclusion of the Court of Appeals for the Third Circuit (that damages may be recovered for the mere presence in the marketplace of the "acquired" businesses and that a showing of lessened competition or monopoly is not necessary), respondents ignore the cases entirely and end "Point I" of the argument section of their brief with a quotation of the Court of Appeals statement which gave rise to the first of the questions presented (Brief for Respondents, p. 41). This simply is not enough. The statement by the Court of Appeals is the starting point for analysis, not the ending.

II.

RESPONDENTS' RESPONSE TO THE SECOND QUESTION IS WITHOUT MERIT.

The second question presented in this case is whether the "failing company" principle requires dismissal of a treble-damage action which is based on alleged violations of Section 7 of the Clayton Act where the plaintiffs' entire damage theory rests on the premise that the "acquired" businesses would have failed and disappeared from the market had the defendant not kept them alive by making the challenged "acquisitions." There can be no question whatever that respondents' damage theory is based on this premise. Likewise, there can be no question that such a damage theory is totally inconsistent with the "failing company" principle. As Professor Areeda, discussing the instant case, points out in his recent article, the "claim that, in the absence of the challenged merger, the acquired firms would have failed . . . necessarily implies that the merger was lawful." Areeda, **Antitrust Violations Without Damage Recoveries,** 89 Harv. L. Rev. 1127, 1132 (1976). Professor Areeda continues:

> "The plaintiff's claim, accepted by both courts [the trial court and the court of appeals], is internally inconsistent, for the trial court had simultaneously denied the defendant's 'failing company' defense, on the grounds that there was no proof 'that the [acquired] company is in irreversible failure [and] that the acquisition in question was the sole alternative.' 364 F. Supp. at 322. The court of appeals apparently found no inconsistency between these two positions, arguing that 'the jury may only have decided that Brunswick had not established the defense by a preponderance of the evidence.' 523 F. 2d at 277.

> "The court is clearly wrong. If the plaintiff proves, as he must to win his damage claim, that the retailers would have failed without being maintained or acquired by anyone else, then the plaintiff has proven the facts establishing the failing company defense. The fact that they were proven by the plaintiff and not the defendant is irrelevant. It is, therefore, hard to see why there should be a new trial, when a necessary element of the plaintiff's case on damages would establish that the defendant had not violated the antitrust laws because he was the only available purchaser of a failing company." *Id.* at 1132-1133 n. 34.

Respondents seek to avoid the impact of this logic not by meeting it head-on but by making three diversionary arguments, none of which has any merit. First, they argue that petitioner somehow failed to make the "failing company" argument properly in the courts below. Second, they argue that petitioner was responsible for the "failing" status of the "acquired" companies and should not be permitted to benefit from its own conduct. Finally, they argue that the "failing company" doctrine is inapplicable to vertical acquisitions. We shall deal with these contentions seriatim.

A. The "Failing Company" Argument Has Been in This Case at All Levels.

Respondents assert that petitioner's "failing company" argument was an afterthought, not seriously pressed in the courts below (Brief for Respondents, pp. 42-44). That is not so. The "failing company" argument has been in this case at all levels. The trial court charged the jury on the "failing company" doctrine (A1502) and fully recognized

the seriousness with which petitioner pressed this argument; in its opinion denying petitioner's post trial motions, the trial court characterized the argument as a "neat 'Catch-22' proposition" (Pet. App. p. 41a). The Court of Appeals also recognized that petitioner was seriously pressing a "failing company" argument, although it too rejected the argument (Pet. App. 26a-27a).

Respondents assert that "Brunswick did not seriously press 'failing company' before the court of appeals, devoting only one and a half of 58 pages of its court of appeals brief to a more limited argument that 'a plaintiff cannot base a recovery on inconsistent factual positions' (p. 48)" (Brief for Respondents, p. 43). The assertion is difficult to understand. In our main brief in the Court of Appeals we said (Brief for Appellant, pp. 47-48):

> "Ever since **International Shoe Co. v. FTC**, 280 U. S. 291 (1930), it has been well established that an acquisition otherwise prohibited by Section 7 of the Clayton Act is immune from challenge under that section where it is shown that the financial condition and resources of the acquired company were so dire that it faced the grave possibility of business failure and there were no prospective purchasers other than the acquiring company. [Citations]. In adopting this 'failing company' doctrine, Congress and the courts have considered it more important to preserve the existence of the competitive entity than to do away with the potential anticompetitive effects of the acquisition.
>
> "While 'the burden of proving the conditions of the failing company doctrine has been satisfied is on those who seek refuge under it,' [citation], it is manifest that, where the conditions have been proved or conceded or assumed to exist, the acquisition cannot violate Section 7 and there can be no liability.
>
> "Since it was based on the premise that, but for Brunswick's takeover, the bowling centers involved in this case would have gone out of business, plaintiffs' damage theory, as well as the jury verdict based thereon, necessarily assumed that all conditions of the failing company doctrine had been met. It is implicit in plaintiffs' theory of damages that the acquired centers were in such dire financial straits that they necessarily would have failed under their existing ownership and that there was no potential purchaser other than Brunswick. Thus, the damage award assumed a state of facts which would negate the existence of liability-creating conduct. This was clearly improper. A damage award must be predicated on a state of facts consistent with a finding of liability, [citations], and a plaintiff cannot base a recovery on inconsistent factual positions, [citation]. Plaintiffs cannot have their cake and eat it too." (Footnotes omitted).

In our reply brief in the Court of Appeals, we said (Appellant's Reply Brief, p. 14):

> "In our main brief (pp. 47-48), we demonstrated that plaintiffs' damage theory assumed a state of facts inconsistent with a finding that Section 7 was violated. Plaintiffs have not challenged that demonstration, but rather recast our argument so as to make it appear that we are merely urging a failing company defense (Brief for Appellees, pp. 40-42). Our argument in our main brief was, and remains, that plaintiffs' damage theory is defective since it assumes facts inconsistent with a theory of violation of Section 7 and,

therefore, either the claim of violation must fail or the damage claim must fail. We say this because plaintiffs' damage theory is predicated on the proposition that, if Brunswick had not taken over the bowling centers, the centers' operations would have been terminated; the centers would be out of business entirely. The necessary components of that proposition are (a) that the centers were in such dire financial straits that they could not have remained in business under their prior ownership, and (b) that no other operator would have assumed the operation of the centers. Since the jury awarded damages to plaintiffs on the Section 7 claims, it necessarily found those two facts to be so." (Footnote omitted).

We then pointed out that "these very findings are all that is necessary to establish the failing company defense" and that, therefore, "the facts necessary to support damages negate any liability in this case." We concluded this section of our reply brief in the Court of Appeals with the statement that "plaintiffs' case may not rest on two mutually exclusive hypotheses" (*Id.* p. 15).

What we are arguing in this Court is exactly what we argued in the Court of Appeals, that is, that respondents cannot have it both ways. If respondents want to establish a damage claim for a Section 7 violation, they cannot assume that the "acquired" bowling centers would have gone out of business but for the "acquisitions." For when respondents make such an assumption, they assume a state of facts which, by virtue of the "failing company" doctrine, is inconsistent with a finding that Section 7 has been violated.

Yet, the only "damages" claimed by respondents were based on such an assumption. Accordingly, respondents either (1) demonstrated by their own evidence that Section

7 was not violated or (2) showed no damages by reason of the claimed Section 7 violation. One or the other of these alternatives must be true. Either one demonstrates that none of the respondents is, in the words of Section 4 of the Clayton Act, a "person who [has] been injured in his business or property by anything forbidden in the antitrust laws."

B. Petitioner Is Not Precluded From Relying on the "Failing Company" Doctrine.

Respondents argue (Brief for Respondents, pp. 44-47) that petitioner should be precluded from relying on the "failing company" doctrine because, if the "acquired" companies were failing, it was because of petitioner's repossessions and one should not be permitted to benefit from his own wrongdoing. The argument is disingenuous. If the "acquired" centers were "failing" it was not because of anything petitioner did, but because the prior operators of the centers could not pay their debts. There would have been no occasion for petitioner to have foreclosed on its security liens on the centers' lanes and pinsetters had the operators of those centers been able to meet their financial obligations. Petitioner had an absolute right, under its chattel security agreements, to repossess the lanes and pinsetters which it had sold to the defaulting operators and the repossessions were not wrongful in any respect.[10]

10. Respondents have never challenged petitioner's right to repossess the lanes and pinsetters of defaulting bowling centers; the challenge has been to petitioner's right to use the repossessed lanes and pinsetters in a bowling center operation. Indeed, in their brief in this Court, respondents have gone so far as to assert that the repossession itself was really not even a part of the challenged "acquisition," but was something that preceded the "acquisition;" the "acquisition," according to respondents' present brief, did not even begin until petitioner obtained other assets used in

It should make no difference at all in application of the "failing company" doctrine that the "acquired" company's financial plight stems from debts owed to the "acquirer" rather than debts owed to third persons. We find no authority that makes such a distinction and respondents cite none. To the contrary is **United States v. Maryland & Virginia Milk Producers Ass'n,** 167 F. Supp. 799, 808-809

10. (Cont'd.)
the operation of a bowling center, *i.e.*, a lease of the premises and procurement of miscellaneous furnishings and restaurant and bar equipment (Brief for Respondents pp. 21-22, 23, 25).

In making such an assertion, however, respondents completely undermine their basic claim that, in the words of Section 7, "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." If the repossessions were not part and parcel of the challenged "acquisitions," there obviously could have been no such effect. Certainly, the mere obtaining of a lease of real estate and procurement of miscellaneous furnishings and restaurant and bar equipment could not have a tendency to substantially lessen competition or create a monopoly.

Moreover, it must be remembered that Section 7 of the Clayton Act does not come into play unless the "acquisition" is from a "corporation engaged in [interstate] commerce." See generally **American Building Maintenance Industries,** 422 U. S. 271, 283 (1975). Respondents have represented to this Court that they satisfied this jurisdictional predicate of Section 7 by evidence pertaining to interstate activities of **the prior operators** of the "acquired" centers. See Petition for Certiorari in **Treadway Companies, Inc. et al. v. Brunswick Corporation** (October Term 1975, No. 75-770), pp. 21-27. Indeed, in declining to order dismissal of this action on "commerce" grounds, the Court of Appeals relied on this "evidence" of interstate activities of **the prior operators** (Pet. App. pp. 15a-16a). But all that petitioner was shown to have "acquired" from the prior operators were the repossessed lanes and pinsetters themselves; the real estate leases and other items were obtained from landlords and other persons with respect to whose activities there is no evidence. Accordingly, respondents' present assertion, that repossession of the lanes and pinsetters was not part of the challenged "acquisitions," constitutes an admission by respondents that they failed to satisfy the jurisdictional prerequisite of Section 7. While the Court has limited its grant of certiorari in this case to only two of the three questions presented by petitioner, the Court should not ignore the "commerce" implications of an approach which assumes that the repossessions were not part of the challenged "acquisitions."

(D. D. C. 1958), *aff'd* 362 U. S. 458 (1960), where an acquisition by a major creditor was upheld on the basis of the failing company" doctrine.[11] And the courts have long recognized the right of a creditor, notwithstanding the language of Section 7, to look to its debtor's assets for satisfaction of legitimate claims. See **Aluminum Co. of America v. FTC,** 299 Fed. 361, 365 (3d Cir. 1924); **Western Meat Co. v. FTC,** 33 F. 2d 824, 825-826 (9th Cir. 1929), *cert. denied* 281 U. S. 771 (1930).

The underlying rationale of the "failing company" doctrine—the desire to preserve the competitive entity,

11. After holding one acquisition to be illegal under Section 7, Judge Holtzoff said:

> "A different problem arises in connection with the acquisition of the capital stock of the Richfield-Wakefield Dairies. There are two concerns involved, one known as Richfield, the other one Wakefield. At the time in question, the Richfield Corporation was out of business, but owned and controlled the stock of Wakefield Corporation, or rather Simpson Brothers, Incorporated, which operated the Wakefield Dairy. The evidence establishes without contradiction that at the time when the capital stock of these two corporations was purchased by the defendant the two companies were hopelessly insolvent and were deeply in debt. The defendant was a very large creditor, for an amount exceeding $300,000, for unpaid milk bills. The Wakefield Dairy was in fact on the brink of bankruptcy.
>
> "The acquisition of capital stock or assets of a failing corporation is not within the ban of Section 7 of the Clayton Act. While the statute does not expressly so provide, this conclusion is inherent in the statutory provision because the acquisition of a failing corporation that is on the verge of going out of business cannot result in lessening competition or in creating a monopoly. Be that as it may, the Supreme Court so held in International Shoe Co. v. Federal Trade Commission, 280 U. S. 291, 298, 50 S. Ct. 89, 74 L. Ed. 431.
>
> "The Court concludes, therefore, that the acquisition of the capital stock of the Richfield Dairy Company and Simpson Brothers, Incorporated, was not violative of Section 7 of the Clayton Act."

There was no appeal from this aspect of Judge Holtzoff's ruling.

even in the hands of a company that normally would be precluded from acquiring it, rather than see it go out of existence altogether—applies whether the "acquired" company's plight stems from debts owed to third persons or debts owed to the "acquirer." So long as it is assumed that, but for the "acquisition," the "acquired" company would have failed and disappeared from the marketplace, there can be no finding that the "acquisition" violated Section 7.

C. The "Failing Company" Doctrine Applies to Vertical, as Well as to Horizontal, Acquisitions.

Respondents' argument that the "failing company" doctrine is inapplicable to vertical acquisitions (Brief for Respondents, pp. 48-50) is contrary to settled law. While it is true that **International Shoe Co. v. FTC,** 280 U. S. 291 (1930), the case which first recited the failing company doctrine, arose in a horizontal merger context, it must be borne in mind that **International Shoe** was decided at a time when the only type of "acquisition" that Section 7 of the Clayton Act prohibited was an acquisition of shares of stock, the effect of which "may be to substantially lessen competition **between the corporation whose stock is so acquired and the corporation making the acquisition,**" *i.e.* a horizontal merger. When Section 7 was amended in 1950 to apply "not only to mergers between actual competitors but also to vertical and conglomerate mergers" (**Brown Shoe Co. v. United States,** 370 U. S. 294, 317 (1962)), Congress specifically expressed its intention to preserve the "failing company" doctrine. See H. R. Rep. No. 1191, 81st Cong., 1st Sess. 6; S. Rep. No. 1775, 81st Cong., 2d Sess. 7; **Brown Shoe,** *supra* at 331; **United States v. General Dynamics Corp.,** 415 U. S. 486, 506 (1974). In its discussion of the "failing company" doctrine, Congress

drew no distinction between horizontal acquisitions, on the one hand, and vertical acquisitions, on the other. Neither has this Court done so. Indeed, the reference in the **Brown Shoe** opinion to Congress' "intention to preserve the 'failing company' doctrine" (370 U. S. at 331) is contained in that portion of the Court's opinion entitled "The Vertical Aspects Of The Merger" (*Id.* at 323). For a case specifically applying the "failing company" doctrine to defeat a Section 7 challenge to a vertical acquisition, see **United States v. Maryland & Virginia Milk Producers Ass'n,** *supra.*

As support for their argument that the "failing company" doctrine should not apply to vertical acquisitions, respondents rely upon the Sixth Circuit decision in **United States Steel Corp. v. Federal Trade Commission,** 426 F. 2d 592 (6th Cir. 1970) (Brief for Respondents, pp. 26, 51-52). The reliance is a curious one for, in the **United States Steel** case, the Sixth Circuit specifically pointed out:

> "The United States Supreme Court first carved out the 'failing company' defense to the antitrust laws in *International Shoe* . . .
>
> "Twenty years later, in 1950, while reporting on the Celler-Kefaufer [sic] amendments to the Clayton Act, both houses of Congress expressed an intention to preserve the failing company defense established in International Shoe. Indeed, since the effect of those amendments was to broaden the sweep of the Clayton Act § 7 to include acquisitions which lessened competition 'in any line of commerce,' rather than merely 'between' two companies, **Congress ostensibly approved an extension of the failing company doctrine to vertical, product extension, and conglomerate acquisitions, in addition to the horizontal-type acquisition which took place in International Shoe.**

> "Twelve years later, in 1962, **the United States Supreme Court affirmed the applicability of the 'failing company doctrine' to** horizontal, United States v. Diebold, Inc., 369 U. S. 654, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962), and **vertical mergers,** Brown Shoe Co. v. United States, 370 U. S. 294, 82 S. Ct. 1502, 8 L. Ed. 2d 510 (1962) under the amended Clayton Act § 7. 15 U. S. C. § 18 (1964)." *Id.* at 607-608 (footnotes omitted).

In view of these statements in the **United States Steel** case, and further in view of the fact that the Sixth Circuit remanded that vertical merger case to the Federal Trade Commission to give the defendant an opportunity to present further evidence to substantiate its "failing company" defense (*id.* at 605), we do not understand how respondents can now state to this Court that the **United States Steel** decision "holds that the failing business doctrine is not applicable to vertical as distinct from horizontal acquisitions" (Brief for Respondents, p. 26). Obviously, the **United States Steel** decision holds just the opposite.

In any event, from a policy standpoint—if a policy decision is still open to this Court in view of the clear legislative history—there is no logical basis for treating a vertical "acquisition" any differently from a horizontal one in terms of applicability of the "failing company" doctrine. The fundamental consideration—that the public welfare requires preservation of the competitive entity—is the same in both types of cases. And that is especially true where, as here, the plea to eliminate the "failing company" doctrine comes from competitors of the "failing companies" who resent being prevented from dividing up the carcass of a "failing" competitor to the detriment of the consuming public.[12]

12. In their brief in this Court, respondents indicate that their hope and expectation was that the "debt-ridden proprietor" would be "compelled to stop business through the foreclosure on the machines and lanes" and that "in the normal sequence of events the surviving proprietors in the competitive market would have had their revenues increased by the bowling patronage of the center which had disappeared from the market. Respondents were damaged by loss of their fair shares of such revenues" (Brief for Respondents, p. 25). Respondents wanted "the reasonably to be anticipated profits which would have come to them upon Brunswick's foreclosure of the lanes and pinsetters" (Brief for Respondents, p. 38).

Respondents' president testified that his real complaint was that "Brunswick was keeping alive the center which we think should not be in business—should not have been" (A377) and that, had it not been for the "very, very active competition between our center and theirs . . . we could increase our price" (A449).

CONCLUSION.

The judgment of the Court of Appeals for the Third Circuit should be reversed insofar as it directs a new trial in this matter. The case should be returned to the United States District Court for the District of New Jersey with directions to dismiss the action.

Respectfully submitted,

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ADDENDUM.

RESPONDENTS' DISTORTIONS OF THE RECORD.

Reluctantly, but unavoidably, we advert to the fact that respondents' brief is replete with factual distortions of the record in this case, perpetrated with the objective of portraying petitioner in the most unfavorable possible light in the eyes of this Court. As we mentioned at the outset of the Reply, these distortions are irrelevant to the questions presented to this Court and, accordingly, we have not encumbered the main body of the Reply with detailed references to them. However, since we believe that we should not permit respondents' assertions to go unchallenged, we are setting forth in this Addendum some of the more flagrant examples of contrived or misstated facts by respondents.

1. Respondents assert that "the record shows" that "in most instances" petitioner resold repossessed pinsetters "in Japan and Europe" (Brief for Respondents, p. 25), but respondents cite no record references for this assertion. The reason for the omission is obvious. The statement is completely without foundation.

The record is clear that only a "very few" repossessed pinsetters were sold anywhere outside of the United States (N. T. 2173, 2177) and that **none** was sold in Japan or Europe (A880, N. T. 4202).

2. Respondents assert that petitioner "resold" repossessed pinsetters "in most instances" (Brief for Respondents, p. 22). Again the statement is completely baseless, although this time respondents do provide a record reference. Respondents cite Exhibit D1 (A1866), but that

exhibit does **not** show sales of repossessed pinsetters; the only sales figures contained in Exhibit D1 are sales of **new** pinsetters.

The exhibit which does show sales of **repossessed** pinsetters is Exhibit D4 (A1879). It demonstrates, quite dramatically, that sales of repossessed pinsetters lagged far behind repossessions:

Year	*Quantity Repossessed*	*Quantity Sold*
1961	300	44
1962	1,462	514
1963	3,354	2,285
1964	4,592	2,447
1965	5,996	1,740
1966	3,658	1,265
1967	1,688	587
1968	716	547

3. Respondents state that petitioner entered the business of operating bowling centers for the purpose of encouraging sales of A-2 pinsetters and competing with AMF (Brief for Respondents, pp. 14-15, 19-21). They maintain that "long before" petitioner formed its Bowling Center Operations Division in January 1965, petitioner had decided on the "key objective" of using A-2 conversions in centers operated by it to encourage other centers also to make A-2 conversions (Brief for Respondents, p. 14) and that another "major" objective that petitioner "hoped to achieve by entering the bowling center business" was "to use new BCOD centers as 'interceptors' to AMF centers" (Brief for Respondents, p. 19). These assertions, too, are sheer nonsense.

In support, respondents point to only one item, Exhibit P64 (A1746-A1764). That exhibit reveals on its face that it was prepared **after** petitioner was already in the business of operating bowling centers. The exhibit states at the outset (A1746):

> "The Brunswick Center Operations Division has been in existence since January 1, 1965. It was established primarily for the purpose of evaluating, acquiring and profitably operating bowling establishments that are in distress, and thereby delinquent in payment of their equipment accounts.
>
> "During the eight-month life of the Division, we have been engaged almost 100% in performing the above objectives. However, in so doing we have acquired some basic concepts of the potential this Division can attain in the near future."

Exhibit P64 is a proposed "5-Year Plan" prepared by petitioner's Bowling Center Operations Division. As petitioner's president testified, without contradiction, such plans "are fairly loose things" and the suggestions contained therein do not represent corporate policy unless approved by management (A1429-A1430). There was no evidence that either of the "objectives" cited by respondents was approved by management.

Moreover, the two points upon which respondents rely were not "objectives" at all, but only minor aspects of an overall proposal. The "5-Year Plan" listed nineteen proposed "objectives" (A1746-A1750). The item which respondents quote with regard to A-2 conversions is contained in the fourth subheading of the fourth division of "plans" for meeting the third of the nineteen "objectives;" it is described as one of the "Bowling Image Building

Plans" (A1762).[1] The reference to "interceptors" is contained in a sentence at the end of a paragraph dealing with methods of achieving the second objective (A1754).[2]

These two items were obviously nothing more than proposals to make the most out of a bad situation. To characterize them as "major objectives which Brunswick hoped to achieve by entering the bowling center business" (Brief for Respondents, p. 19) is a typically extravagant and wholly unwarranted assertion.

The evidence is entirely clear that petitioner's entry into the business of operating bowling centers was motivated solely by its desire to salvage its investment in repossessed equipment and to solve the financial crisis caused by the combination of receivable defaults and loan demands which it faced (A1362-A1373). The internal proposals prepared after petitioner's entry into the business, concerning the potential side benefits that might accrue from operating bowling centers, are in no way contradictory of this evidence.

4. Respondents assert that they "demonstrated at the trial that once Brunswick foreclosed on and then acquired one of its customers, the BCOD center it then operated enjoyed concrete competitive advantages which could be evaluated at $2,000 per lane per year" (Brief for Respondents, p. 12). This figure supposedly derives from a calculation of sums that a competing bowling center operator that was paying off equipment obligations to petitioner

1. The third objective was:

"To promote the bowling industry as a whole, increasing interest, participation and improving the image of bowling" (A1748).

2. The second objective was:

"To obtain and operate retail bowling establishments that are in distress, thereby creating a favorable cash flow within the first year, and a Division profit within three years" (A1748).

would have to pay each year. The exhibit prepared by respondents which purported to show this "competitive advantage" (A1574), and which was admitted into evidence over petitioner's objection that it was grossly misleading (A79-A107), failed to take into account a number of salient facts including: (1) that the obligation of a customer to make annual payments to petitioner for equipment did not extend indefinitely but only for the life of the conditional sale contract which was 8 years for pinsetters and 5 years for lanes (A994, A1029-A1030, A1034); (2) that since the average sale was made in 1960 (A1866), many centers remaining in business had already paid off their lane obligations and had only 3 years left on their pinsetter obligations at the time petitioner entered the business of operating bowling centers in 1965; (3) that any bowling center operator who had completed paying for his equipment would enjoy the same "competitive advantage" over competing operators who were still paying for their equipment; (4) that there was over $36 million in unpaid receivable balances on the equipment which petitioner took over for operation in 1965 and petitioner had loan obligations of over $24 million directly related to that equipment (A1886); and (5) that petitioner had cash needs for repayment of principal and interest on these loans which, on a per lane basis, were greater than the cash needs that the average bowling center operator had for repayment of its equipment obligations (A927-A933, A1886).

5. In referring to the events that transpired after petitioner "acquired" Belmont Lanes in Pueblo, Colorado, respondents state (Brief for Respondents, p. 11):

> "In Pueblo, BCOD's Belmont initiated a 'pattern' of 'giveaways' and 'price-cuts' as well as the 'Learn

to Bowl' inducement (A. 154-55; A. 169-170; A. 222-23)."

This cavalier treatment of the record by respondents is completely lacking in candor.

The testimony at A154-A155 has nothing whatsoever to do with petitioner's operation of Belmont Lanes; it pertains solely to a proposed "Learn to Bowl" promotion for respondents' center, Pueblo Bowl-O-Mat, which was discussed by respondents' president and petitioner's representatives in 1961, *i.e.* some four years prior to petitioner's "acquisition" of Belmont Lanes in 1965 (A153).

The testimony at A169-A170 was a cryptic assertion by respondents' president that "as soon as they [petitioner] took it [Belmont Lanes] over and began to compete with us . . . there were certain giveaways, certain price cuts that they practiced." This unsubstantiated statement about "price cutting" was completely refuted by contemporaneous business records which established that there were **no** price reductions by petitioner at Belmont Lanes. The records revealed that, immediately prior to petitioner's "acquisition," Belmont Lanes had been charging 45 cents per game for daytime bowling and 50 cents per game for evening bowling and that, a month after petitioner took over the Belmont operation, petitioner raised the daytime price to 50 cents per game (A1078).

At A222-A223 respondents' president made passing references to (1) "a very widespread program" that petitioner had in the summer of 1965 "of inducing young people to come into the centers to bowl" by offering them a reduced price and (2) "an important promotion to send people to Europe if they bowled in Brunswick centers."

The "inducements" to young people consisted of a program designed to attract school children into bowling

centers during a time when they normally would be engaged in other activities. The program—a reduced-price package of three games of bowling, shoe rental, a hot dog, and a Coke—was offered to youngsters from late spring through the summer and only during the daytime. This was after the end of the regular bowling season and at a time when young people are attracted to outdoor activities, not bowling. The witness most familiar with the program testified: "We were competing, in our minds, with the outdoor activities, the camps, the swimming, the Little Leagues baseball. And it was our feeling that we could generate some new interest in bowling by youngsters" (A1292-A1293). There was no evidence that this program caused other bowling centers to lose any business.

The so-called "important promotion to send people to Europe" was a bowling competition at petitioner's centers which resulted in **two** people in the entire United States winning a free trip to Europe each year. The **entire** cost of this competition was borne by the individual bowling centers. The cost was approximately $25 per lane per year (A1296-A1298, A1305-A1306). Again there was no evidence that this program caused other bowling centers to lose any business.

All of this is a far cry from a "pattern" of "giveaways" and "price-cuts".

6. In referring to the events that transpired after petitioner "acquired" Dutchess Lanes in Poughkeepsie, New York, respondents state (Brief for Respondents, p. 11):

> "In Poughkeepsie, BCOD's Dutchess began price cutting (A. 431). . . ."

This statement is an egregious mischaracterization of the record.

The testimony at A431 is simply another cryptic, never substantiated, assertion by respondents' president that "the

price was cut at Dutchess Lanes . . . after Brunswick took it over." This assertion was refuted by contemporaneous business records which established that prices at Dutchess Lanes under petitioner's operation were at a level generally the same as under the prior operator, that there was a price **increase** in the major part of the business (evening leagues) and that the only area in which there was any price reduction at all related to an insignificant portion of the business (morning leagues); this single decrease came about only because petitioner decided to charge the same for league play as for "open play" (A1078-A1080). At the beginning of the following season, petitioner increased league prices at Dutchess Lanes thereby eliminating even this insignificant reduction (A1079).

This is not "price cutting."

7. With respect to the Paramus area, respondents assert (Brief for Respondents, pp. 11-12):

> "And in Paramus Brunswick also underwrote numerous inducements in its BCOD centers, including cut-rate prices and free trips to Europe (A. 222-23; A. 569) which would be 'too expensive' for the Paramus respondent to offer (A. 223; A. 569). BCOD's Fair Lawn initiated cut-rate programs (A. 413-14), and Brunswick reduced prices at Ten-Pin-on-the-Mall (A. 419-21) and Interstate Lanes (A. 602-03)."

We have already discussed the "free trips to Europe" and the testimony at A222-A223 relating to them. The testimony at A569 adds nothing of any substance. The statement by respondents' witnesses that this was "a very expensive promotion" (A569) and "too expensive for us to have funded" (A223) is belied by the cost figures,

which reveal that the "Bowl-Your-Way-to-Europe" tournament cost only $25 per lane per year and that this cost was charged to petitioner's individual bowling centers (A1296-A1298, A1305-A1306). In this connection, it should be noted that respondents' bowling centers spent a greater percentage of their revenues on advertising and promotion than did petitioner's centers (A920-A925).

The testimony at A413-A414 also relates to the "Bowl-Your-Way-to-Europe" tournament and the "cut-rate" program in the summer of 1965 for school children, both of which we have discussed above.

At A419, respondents' president testified that Ten-Pin-on-the-Mall (which petitioner did not begin operating until 1969) "has had for years a lower price than we," but he did not say that this "lower price" was one which petitioner instituted (as distinguished from one which had been instituted by the prior operator). At A420 respondents' president testified that he thought petitioner had reduced the price at Ten-Pin "a little bit" when it began operating the center. The contemporaneous records refuted that assertion. They demonstrated that petitioner did not reduce any of the prices at Ten-Pin when it took over that operation but, to the contrary, raised prices (A1073-A1074, A1081-A1082, A1303-A1304).

At A602-A603, one of respondents' witnesses stated that Interstate Lanes had lower prices for league bowling than did Paramus Bowl-O-Mat; however, the testimony did not indicate whether the differential was due to a lowering of prices at Interstate Lanes or a raising of prices at Paramus Bowl-O-Mat. Petitioner produced documentary evidence showing that it had raised, not lowered, prices at Interstate Lanes (A1077).

The head of petitioner's Bowling Center Operations Division testified that petitioner did not lower prices when it took over the operation of a center; on the contrary,

petitioner either kept prices the same or raised them (A1071-A1073). Respondents simply misrepresent the record when they refer to "price cutting".

8. Respondents assert that there were "competitive distortions" and that business was "siphoned off" when centers operated by petitioner in Pueblo and Paramus converted to A-2 pinsetters (Brief for Respondents, pp. 14-15). There is nothing in the record to substantiate such a claim. The only reference in the record to any shift of business which might have been attributable to conversions to A-2 pinsetters was the testimony of one of respondents' witnesses that Pueblo Bowl-O-Mat lost leagues after petitioner installed A-2 equipment at Belmont Lanes (A504). However, the witness was able to point to only a single league which switched from Pueblo Bowl-O-Mat to Belmont Lanes after the installation of the A-2 equipment (A508). The loss of a single league in a single market is hardly a "competitive distortion" or a "siphoning off" of business. It is inevitable, in any retail business, that a patron may occasionally shift patronage from one competitor to another.

9. Respondents assert that "continued operation of Brunswick's centers at a loss was the economic reality which confronted [respondents] in Pueblo, Poughkeepsie and Paramus" (Brief for Respondents, p. 10). This is untrue, and even the Appendix to the Brief for Respondents (p. 1a) demonstrates the fallacious nature of the statement. The Appendix shows that, under petitioner's operation, Interstate Lanes and Fairlawn Lanes have been profitable by any standard. (See also A427, A1127.)

Furthermore, the crucial concern when one focuses on "deep pocket" considerations should not be with paper "profits" or "losses," but rather with whether cash flowed from petitioner to a bowling center or the other way. In addition to showing that Interstate Lanes and Fairlawn Lanes were profitable operations for petitioner, the evidence also demonstrated that Ten-Pin-on-the-Mall produced a positive cash flow to petitioner ever since petitioner took it over (A1129) and that Belmont Lanes had positive cash flows in 1966, 1967, 1971 and 1972 (A1258-A1259).

On the other hand, the evidence demonstrated that Dutchess Lanes was closed after petitioner was unable to make a go of it (A433, A1126), despite a forecast of profitable operations (A1613), and that petitioner's lease of Lodi Lanes was terminated after that center failed to produce profits (A1129, A1850).

This is a far cry from "continued operation of Brunswick's centers at a loss."

10. Respondents assert (Brief for Respondents, p. 15) that "the Paramus respondent . . . consistently lost money due to Brunswick's anticompetitive pressures (Pl. Ex. 13; A. 220, 1625)." This statement about the cause of the Paramus respondent's losses is not supported by respondents' record references.

Plaintiffs' Exhibit 13 is simply a chart containing profit and loss information for the Paramus respondent; A1625 is the page of the printed record containing that chart; and A220 is the page of the record at which the exhibit was identified and received into evidence.

While the exhibit and the cited testimony (of respondents' president) show consistent losses by the Paramus respondent, there is nothing which attributes any of the losses to "Brunswick's anticompetitive pressures." The witness simply testified that, beginning in 1965, "the operation of the Brunswick centers was tougher competition for us" (A222).

11. Respondents assert (Brief for Respondents, pp. 15-16) that "once Brunswick persuaded a customer to open a center and to put a 30% down payment on its pinsetters (A. 674-675; A. 259-260), Brunswick instantly recouped its manufacturing cost on its pinsetters." That statement is demonstrably untrue.

The undisputed evidence in this case is that the down payment on pinsetters was $500, which is only six percent of the $8100 selling price (A259-A260, A456-A457, A1029-A1030).[3] Respondents' president conceded that petitioner did not recoup its manufacturing cost out of the down payment (A456-A457). Petitioner's original direct manufacturing ($2,860) and installation ($276) costs for each pinsetter taken over by its Bowling Center Operations Division in 1965 were shown to have been in excess of $3,100 (A907-A908, A1885). In addition, petitioner had numerous indirect costs in connection with the manufacture and sale of those pinsetters (N. T. 2278-2281).

12. Respondents would have the Court believe that petitioner willfully induced "overbuilding" of bowling centers in Pueblo and Poughkeepsie (Brief for Respondents, p. 17).

As "proof" of their contention as to Pueblo, respondents point to encouragements given by petitioner prior to the time respondents opened their 40-lane center in Pueblo in August **1960** and respondents state that petitioner had in its possession at that time a "contemporaneous analysis [which] stated flatly that 'the economy in Pueblo cannot support an additional 24 lanes . . .' (Pl. Ex. 6; A. 159, 1599-1600)" (Brief for Respondents, p. 17). The

3. The reference in the testimony to a "30% down payment" was to a new policy that petitioner instituted in 1966 (A259-A260, A674-A675) and, not, as respondents would have the Court believe, to the situation existing prior to petitioner's entry into the bowling center business.

fact of the matter is that this "contemporaneous analysis" is dated June 2, **1961** (A1600), *i.e.* 10 months **after** respondents opened their 40-lane center.

Respondents also argue that "in 1962 Brunswick assured the potential owners of Belmont, which it later acquired, that there was a 'definite need for more bowling facilities in this area' (Pl. Ex. 4, A. 128, 1593-97 at 1595)." That simply is not true. Plaintiffs' Exhibit 4 (which contains the quoted statement) is not a document given to the potential owners of Belmont in 1962. Plaintiffs' Exhibit 4 is a document which petitioner gave to respondent in 1960, before the 40-lane Pueblo Bowl-O-Mat was opened (A125-A128).

As "proof" of their contention as to Poughkeepsie, respondents state that "Brunswick's Evaluation Report No. 76 (Pl. Ex. 10; A. 190, 1604-22; A. 189-98) acknowledged that Brunswick itself caused overbuilding in the Poughkeepsie market" (Brief for Respondents, p. 10). The document "acknowledges" no such thing. It simply states that the existing "lanes to person ratio of 780 to 1 . . . is below the estimated proper ratio of 950 to 1 for this type of market" (A1610). The document does not say that the "lanes to person ratio" was at an improper level when any of the centers was built; indeed the document points out that the population of the City of Poughkeepsie decreased 6.6% during the 1950's and decreased even further from 1960 to 1964 (A1619). Moreover, the document also shows that, of the 146 bowling lanes in the Poughkeepsie market, only 42 were Brunswick lanes; the other 104 lanes were AMF lanes (A1620-A1621). Thus, although the document does not accuse either AMF or petitioner of overbuilding, it is obvious that, if such a charge were to be levelled against anyone, the logical target would be AMF, not petitioner.

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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-904

BRUNSWICK CORPORATION,

Appellant,

vs.

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

MOTION OF PUREX CORPORATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF.

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PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC.,

Respondents.

MOTION OF PUREX CORPORATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF.

Comes now the Purex Corporation, a corporation, by its counsel, pursuant to Rule 42 of the Rules of this Court, and moves this Honorable Court for leave to file a brief *amicus curiae* in general support of the Respondents and relating to the first question as to which the petition for a writ of certiorari was granted.

The Purex Corporation is a corporation organized and existing under the laws of the State of California. Purex produces and sells a large number of products, including household cleaning products. One of its most significant products has been Purex Liquid Bleach. Purex is the plaintiff in an action now pending in the United States District Court for the Central District

of California in which it seeks the recovery of damages under Sections 4 and 7 of the Clayton Act, as well as under Sections 1 and 2 of the Sherman Act, for injury which it alleges resulted from the 1957 acquisition by the Procter & Gamble Company of Clorox Chemical Company. While that acquisition was challenged almost immediately by the Federal Trade Commission, it was not until a decade later, after this Court issued its Opinion holding that the acquisition did in fact violate Section 7 (*F.T.C. v. Procter & Gamble Co.* (1967), 386 U.S. 568) that P&G divested itself of Clorox. Parenthetically, it should be noted that the Federal Trade Commission and this Court found Clorox' share to be "dominant" at the time of the acquisition (Clorox had approximately forty-eight per cent of the market); by the time of divestiture, in 1969, that share had increased to almost sixty per cent. Purex alleges that its share of market was substantially reduced and, in addition, that it was prevented from expanding geographically by the massive retaliatory capacity Procter & Gamble's presence in the industry gave to Clorex.

The Purex Corporation desires to file a brief *amicus curiae* relating solely to the first issue on which the writ of certiorari was granted.[1] Purex believes that the resolution of this issue may be of broad significance, both to the economy and to the future effectiveness of Section 7 enforcement. The first issue accepted for hearing by this Court is phrased in terms of whether the mere continued presence in the industry of an entity illegally acquired by a deep pocket parent can afford a basis for the recovery of damages by an injured horizontal competitor. The Court's consider-

[1]Purex made request of the parties for consent to file an amicus brief but such consent was not given.

ation of the question will automatically and necessarily, because of the way the question is put, include the assumption that but for the acquisition, the acquired entity would not have been "present" in the industry. Thus, unless carefully delineated, the focus of the first question is clouded by the second issue upon which the writ was granted—whether the failing company principle would require a dismissal of the action. There is a distinct danger that because the two questions presented are inexorably interrelated, given the facts of the *Brunswick* case, the parties and the Court will view with a limited perspective an issue having profound economic implications. The facts presented by the case are certainly atypical in that we are aware of no other instance in which a Section 7 plaintiff has conceded that but for the acquisition, the acquired company would have been unable to remain in the marketplace. Such unique facts make it difficult to arrive at a general standard for private recovery of injuries caused by illegal acquisitions. Unless carefully considered and framed, the resulting standard might unintentionally preclude recovery by injured competitors even where the violation of Section 7 is unquestioned and where the plaintiff's claim for damages in no way depends upon the hypothetical disappearance from the marketplace of the acquired company. Purex believes that its brief *amicus curiae* will assist the Court in assessing the importance of (1) keeping strictly separate its consideration of the two questions as to which the writ of certiorari was granted, and (2) carefully considering the broad effects of its resolution of the first question presented.

Purex' brief will analyze the standard for private recovery from a broad perspective, namely, whether

a horizontal competitor of a company acquired by a deep pocket parent in violation of Section 7 can recover damages under Section 4 if it shows injury in fact causally related to the *violator's* presence in the market. Focusing on the presence of the acquiring company, rather than on whether or not the acquired company would have continued in the market, thus directs attention to a factor present in all Section 7 cases and not unique to *Brunswick*. This focus is necessary because any decision in *Brunswick*, even though specifically phrased so as to cover only the presence of the acquired company, will inevitably be extended by lower courts to other Section 7 situations. Conversely, the broader question, however resolved, would provide a standard applicable to the *Brunswick* case.

Purex is hopeful that its brief will be of assistance to the Court in considering the issues presented by the grant of a writ of certiorari. Wherefore, Purex respectfully requests leave to file its *amicus curiae* Brief in support of the judgment below.

Respectfully submitted,

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INTRODUCTION AND STATEMENT OF INTEREST OF AMICUS CURIAE.

Purex Corporation's concern regarding the resolution of the first issue accepted for review by this Court arises, as was detailed in the motion filed concurrently herewith, from the fact that Purex is the plaintiff in an action to recover damages for an alleged violation of Section 7 of the Clayton Act. While Purex is of the view that the facts upon which its lawsuit and claimed damages are based are entirely different from those alleged to exist in the instant case, it realizes that the decision here will undoubtedly play a major role in shaping the standard of proof to be required of all Section 7 plaintiffs. Purex and its counsel have no knowledge of the particular facts which make up the record below and take no position with regard to them. As reflected in the framing of the questions accepted for review, however, that record would seem to present a most unique factual matrix. Purex proposes to analyze the broad issues raised by the Petitioner from the perspective of a horizontal competitor of a company acquired by a deep pocket parent in violation of Section 7, but where there is no contention that the acquired company would have gone out of business but for the acquisition. Purex hopes that this Brief will assist the Court in separating out the "failing company" issue from the issue of what a private plaintiff must prove to recover damages once a violation of Section 7 is established so that these two abstract issues will be separately considered and decided.

SUMMARY OF ARGUMENT.

At the threshold, the Petitioner in this case has argued that it is incongruous to allow private damage actions for injury stemming from a violation of Section 7 of the Clayton Act. The argument of *amicus* establishes that in fact traditional principles of statutory construction require this Court to reach the conclusion that Section 7 violations, as with other violations of the antitrust laws, serve as the basis for private damage actions by injured parties. Even more importantly, such actions assist in the effective enforcement of the antitrust laws, and provide the only practical method for undoing the changes in market structure which may follow anti-competitive mergers. Such mergers typically confer upon the acquired company competitive advantages (as, for example, reciprocal dealing arrangements, deep pocket assistance, etc.) which the acquired company would not have had if no acquisition had taken place. Gains in relative market strength by the acquired company which occur thereafter are often directly caused by the advantages gained by virtue of the illegal acquisition. Unless private plaintiffs are allowed to recoup their losses attributable to such changes, it is most unlikely that the market structure will return, upon divestiture, to its pre-acquisition status. Divestiture alone does not turn back the clock nor does it unscramble the omelet created by the acquisition. Furthermore, without such private damage actions no real disincentive for the making of questionable acquisitions exists. The violator who may have reaped massive profits from an industry because of the application of deep pocket power or reciprocal dealing advantages will not ever face the prospect of disgorging his booty.

Even a forced divestiture sale will often yield a profitable return on the initial investment made.

Secondly, *amicus* discusses what it is that a private plaintiff must show in addition to a violation of Section 7 before recovery of damages will be allowed. In summary, the requirements of Section 4 set forth exactly what must be proved, and no basis exists for imposing different requirements of proof on Section 7 plaintiffs than are applicable to antitrust plaintiffs generally. Petitioner seems to argue that in addition to showing a Section 7 violation, a private plaintiff must also prove that a restraint of trade or monopoly has occurred —in effect, requiring proof of another independent antitrust violation. Most of Petitioner's argument to this effect, however, is based upon the implicit underlying assumption that the acquisition in this case was pro-competitive because the companies acquired were "failing", and thus no damage award against it would be proper. The real rationale of this argument is dependent not upon what standard should be applied for a Section 7 recovery, but rather on whether Section 7 was violated at all. When the failing company question is separated out, the correctness of the Third Circuit's decision below on the standard of recovery issue becomes apparent. As applied to horizontal competitors, changes in an industry, which would not have occurred but for an illegal acquisition, and which proximately result in foreseeable injury to competitors must be the proper basis for an action for the recovery of damages, if the marketplace is to ever approximate the situation prior to the acquisition.

ARGUMENT.

I

Competitors Actually Injured as the Result of an Illegal Acquisition Should Be Afforded the Right to Recover Their Damages.

While discussing the first issue for review by this Court, Petitioner argues extensively that no recovery should be allowed for injury stemming from a violation of Section 7 of the Clayton Act. Petitioner's position has been uniformly rejected by the lower courts, and the following discussion will demonstrate that there are strong reasons of statutory construction and social and economic policy which require that an injured competitor be given an opportunity to recover actual damages where there has been a violation of Section 7.

A. The Courts Have Uniformly Decided That Proper and Traditional Statutory Construction Requires the Conclusion That a Violation of Section 7 Can Support a Private Right of Action.

Contrary to the impression rather skillfully conveyed in Petitioner's Brief (pp. 19-24), there is no split of authority on the question of whether Section 7 supports a private right of action. There are not "a number of courts" on one side of the issue and "a number of other courts" on the other side of the issue. Every single case cited by Petitioner (Brief, p. 24) as holding that a claim under Section 4 of the Clayton Act could not be based on a violation of Section 7 has been reversed, overruled, or invali-

dated.[1] This result is compelled by the Clayton Act itself. Section 4 of the Clayton Act provides that "[a]ny person who shall be injured in his business or property *by reason of anything forbidden in the antitrust laws* may sue therefor . . . and shall recover threefold the damages by him sustained . . . ." (Emphasis added). The Clayton Act (including Section 7) is obviously an "antitrust law" quite clearly encompassed within the terms of Section 4.[2]

Six of the Courts of Appeals have explicitly approved private actions for damages for violations of Section 7.[3] At least two other circuits appear willing to recognize

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[1]Specifically, *Gottesman v. General Motors Corporation* (S.D. N.Y. 1963), 221 F.Supp. 488, was reversed (2nd Cir. 1969), 414 F.2d 956; *Isidor Weinstein Investment Co. v. Hearst Corporation* (N.D.Cal. 1969), 303 F.Supp. 646, was reversed (N.D. Cal. 1970), 310 F.Supp. 390; *Highland Supply Corporation v. Reynolds Metals Company* (E.D.Mo. 1965), 245 F.Supp. 510, which implemented the Eighth Circuit's decision in the same case (8th Cir. 1964), 327 F.2d 725, was effectively reversed in *Carlson Companies, Inc. v. Sperry and Hutchinson Co.* (8th Cir. 1974), 507 F.2d 959, which held that a private cause of action is available; and *Bailey's Bakery, Ltd. v. Continental Baking Company* (D.Haw. 1964), 235 F.Supp. 705, was expressly overruled by the same judge, following extensive analysis in *Kirihara v. Bendix Corporation* (D.Haw. 1969), 306 F.Supp. 72, 88.

[2]Section 1 of the Clayton Act, 15 U.S.C.A. § 12, provides that " 'antitrust laws,' as used herein," includes the Sherman Act, certain sections of the Wilson Tariff Act, an act amending the Wilson Tariff Act, and, of course, the Clayton Act itself.

[3]*Gottesman v. General Motors Corporation* (2nd Cir. 1969), 414 F.2d 956; *NBO Industries Treadway Cos., Inc. v. Brunswick Corp.* (3rd Cir. 1975), 523 F.2d 262; *Dailey v. Quality School Plan, Inc.* (5th Cir. 1967), 380 F.2d 484; *Carlson Companies, Inc. v. Sperry and Hutchison Co.* (8th Cir. 1974), 507 F.2d 959; *Calnetics Corp. v. Volkswagen of America, Inc.* (9th Cir. 1976), CCH Trade Reg. Rep. ¶ 60,757, at 68,241-68,242, reversing a directed verdict for the defendant; *Martin-Trigona v. Federal Reserve Board* (D.C.Cir. 1975), 509 F.2d 363, 366 n. 12 (Dicta, "It is settled . . . .").

a private cause of action by a plaintiff within the "target area".[4] In addition, a large number of district court cases have recognized the propriety of a private action for a violation of Section 7.

Finally, this Court's decision in *Minnesota Mining v. N. J. Wood Co.* (1965), 381 U.S. 311, 14 L.Ed.2d 405, 85 S.Ct. 1473, lends strong inferential support to the conclusion. That action alleged the violation of Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act, and was based on a challenged acquisition. This Court held that the pendency of a Federal Trade Commission divestiture proceeding tolled the Statute of Limitations, thereby preserving the plaintiff's cause of action. The holding strongly implies that the plaintiff's cause of action based on a violation of Section 7 was properly brought, an implication fortified by the Court's explicit recognition that the plaintiff would have a greater burden of proof on its Sherman Act claims than on its Clayton Section 7 claim. 381 U.S. at 323-324.

Thus, as opposed to the picture painted in Petitioner's Brief, there is no lower court disagreement today with the proposition that a violation of Section 7 can serve as the basis for a private antitrust damage action. Such judicial unanimity was compelled not only by requirements of statutory construction, but also by the realization that allowing such actions would help to accomplish the very economic and societal goals which prompted the enactment of, and are embodied in, the antitrust laws of this country.

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[4]*Blaski v. Inland Steel Company* (7th Cir. 1959), 271 F.2d 853; *Reibert v. Atlantic Richfield Company* (10th Cir. 1973), 471 F.2d 727, *cert. den.* (1973), 411 U.S. 938, 93 S.Ct. 1900.

B. Private Actions for Damages Under Section 7 Strengthen Antitrust Enforcement and Provide the Only Effective Method of Undoing the Changes in Market Structure Which Follow Anti-Competitive Mergers.

It is axiomatic that one of the major purposes of the antitrust laws in general, and of Section 7 of the Clayton Act in particular, is to prevent undue concentrations of economic power.[5] The legislative history of the amendments to Section 7 of the Clayton Act makes it clear that fear of economic concentration was a major factor underlying the Congressional decision to arrest mergers while the trend to concentration was still in its incipiency. *Brown Shoe Co. v. United States* (1962), 370 U.S. 294 at 317.

Section 7 of the Clayton Act thus seeks to stop mergers which, if allowed to take place, might ripen into actual lessened competition or monopoly. If the deterrent effect of Section 7 itself, or enforcement actions thereunder, prevent potentially anti-competitive mergers, then no impact on the market occurs and, of course, there could be no private action for damages. When such a merger is consummated, however, and changes take place in the marketplace which would not otherwise have occurred, competitors can be hurt as a result and unless they are compensated, the structure of the market stands little chance of returning to its pre-acquisition posture.

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[5]*United States v. Trans-Missouri Freight Association* (1897), 166 U.S. 290, 323-324, 41 L.Ed. 1007, 1021, 1022; *Standard Oil Co. v. United States* (1911), 221 U.S. 1, 77-82, 55 L.Ed. 619, 652-654; *Brown Shoe Co. v. United States* (1962), 370 U.S. 294, 317-318, 8 L.Ed.2d 510, 531-532; *United States v. Von's Grocery Co.* (1966), 384 U.S. 270, 275, 16 L.Ed.2d 555, 559; *United States v. Aluminum Co. of America* (2nd Cir. 1945), 148 F.2d 416, 428-429.

For example, a merger which bestows upon the acquired company the advantages of wealth, powerful marketing resources, increased power with customers and suppliers, and an added ability to repel competitive efforts, presents—at least in an already oligopolistic industry—a danger to competition. See, *FTC v. Procter & Gamble Co.* (1967), 386 U.S. 568, 18 L.Ed.2d 303, 87 S.Ct. 1224. The infusion of such advantages into an already dominant company could easily, if allowed to persist, lead to a restraint of trade or actual monopoly. Long before any measurable restraint of trade actually occurs, or before a monopoly is achieved, competitors are impacted. The gain in market power caused by the illegal acquisition and, conversely, the weakening of competitors begins as soon as the changes brought about by the acquisition take effect. At this point, the judicial microscope might be unable to detect any "lessening" of competition, since bitter battles may be taking place in the marketplace as the smaller firms struggle to maintain themselves. Nevertheless, the tendency towards a lessening of competition is in fact taking place and damaging competitors—perhaps permanently. From any rational economic perspective, it is impossible to deny that mere divestiture, after the acquisition has been allowed to run its course for a period of time, will not unscramble the omelet, or restore the *status quo ante* to the market structure. To do that obviously requires the payment of damages to competitors who have actually been injured by the effects of the illegal acquisition.

The primary purpose of Section 7 is to preserve the market structure which existed in the absence of an illegal acquisition. As the Federal Trade Commission

stated in discussing the proper relief to be granted in the *Procter & Gamble/Clorox* case:

> "The anti-competitive effects of this acquisition are not enjoinable. They inhere in the very presence of Procter, standing in the place of Clorox in the liquid bleach industry, and can be corrected only by restoration of the market structure, so far as possible, as it existed at the time of the acquisition."
>
> *The Procter & Gamble Co.*, 63 F.T.C. 1465, 1584.

When a competitor has been damaged by the effects of a consummated acquisition, restoration of the market structure demands that such competitor be allowed to recover its damages. Petitioner's suggestion that private recovery should never be allowed overlooks the fact that shifts in market power and the effects of market entrenchment do not disappear upon divestiture. Unless some remedial action is permitted, the effects upon competitors and the market remain.

What may appear in the short run to be increased competition can, in the long run, have anti-competitive effects. The Third Circuit, in the instant case, recognized this principle:

> "But to focus on short run beneficial effects on consumer prices is to disregard the disjunctive 'or tend to create a monopoly' clause in §7, and to confuse injury to the public with injury to competitors. *The public is not injured while a potential monopolist is vigorously competing to achieve monopoly power, though that injury may come later.* Competitors, on the other hand, are injured in their business or property in a short-run period of predatory competition." (Emphasis added) (Pet. App. 18a).

Almost ninety years ago, this Court recognized the validity of the same principle in a case invalidating an agreement between various railroad companies for the mutual maintenance of reasonable rates on freight traffic, *United States v. Trans-Missouri Freight Association, supra,* 166 U.S. 290, 41 L.Ed. 1007. In that case, the Court recognized that even agreements for lower prices could have adverse effects:

> "In this light it is not material that the price of an article may be lower. It is in the power of the combination to raise it, and the result in any event is unfortunate for the country by depriving it of the services of a large number of small but independent dealers . . . ." 166 U.S. at 324, 41 L.Ed. at 1022.

It can easily be demonstrated that, in the Section 7 context, an apparent "short-run gain" can result in long-term harm. Assume, for example, that a tremendously powerful firm acquired, in violation of Section 7, a company with a 15% share of market in an industry of many competitors of approximately equal size. The acquiring firm, using to good advantage its huge wealth and power, improves the market share of the acquired company to 50% with corresponding declines in the shares of its competitors. If no competitor is actually forced out of business, the acquiror will undoubtedly argue that competition has not been "lessened", but it is unquestionably true that the diminished strength of the previously equal competitors will be an operative fact in the marketplace, and so long as the advantages gained by the now dominant

company remain, competition is in danger. Divestiture by itself will not restore the market structure which existed before the acquisition. The only remedy that has any hope of practical success is to also allow the injured competitors to recover the actual damages which resulted from the unlawful intrusion of the acquiring company's power into the marketplace. It hardly seems unfair that competitors be allowed compensation for their injury when an illegal acquisition has taken place, which has had a demonstrable adverse effect upon them. As stated by this Court, recovery should be allowed where "the injury alleged . . . was precisely the type of loss that the claimed violations of the antitrust laws would be likely to cause." *Zenith Corp. v. Hazeltine* (1969), 395 U.S. 100 at 125.

Finally, it is important to remember that this Court's often stated conclusion that private damage actions are one of the most effective deterrents to antitrust violations is especially applicable to Section 7. Preventing any possibility of private recovery would encourage the violation of Section 7 with impunity. The only remedy facing a defendant would be potential divestiture after years of legal action and, in the meantime, that defendant could apply its power to the marketplace, reap profits, and injure competitors with no fear that in the end there would be any piper to pay. The injured competitor's private right of action for damages suffered as a result of an illegal acquisition serves to increase the deterrent effect of Section 7, thus promoting effective antitrust policy.

II

A Section 7 Plaintiff Must, as With All Antitrust Plaintiffs, Prove Violation, Impact, and Amount of Damage.

Petitioner, in discussing what requirements are to be met before recovery is allowed to a Section 7 plaintiff, argues strenuously that actual lessening of competition (presumably amounting to restraint of trade) or monopoly must be shown before any recovery can be had. In short, Petitioner seeks to have this Court go beyond traditional antitrust analysis under which recovery is allowed when a plaintiff proves a violation of the antitrust laws which produces an adverse impact on his business or property and shows the dollar amount of damage attributable to such impact. Indeed, it would seem that Petitioner is arguing that before a recovery is possible for a Section 7 violation, the plaintiff must prove conduct which would also constitute a violation of Section 1 or 2 of the Sherman Act. The following analysis demonstrates that there is no legal basis for Petitioner's position, and its adoption would make Section 7 damage actions redundant, since other independent antitrust violations, in addition to the violation of Section 7, would always have to be proved before recovery would be possible.

It is at this point that the interrelationship of the two questions as to which the writ of certiorari was granted becomes most troublesome. The normal Section 7 case contains no contention that the acquired company was on the verge of extinction. To the extent that the posited disappearance of the acquired company in the absence of an acquisition is a crucial factor affecting the proper resolution of the instant case, it is a factor which should be considered as part

of the second question upon which certiorari was granted rather than the first. If the "failing company" defense in applicable in the instant case, then there is no violation of Section 7 at all. The standard for what a private plaintiff must prove in order to recover damages for a violation of Section 7 cannot be allowed to depend upon the existence of a fact (that the acquired company would have disappeared but for the acquisition) which fact in itself would eliminate the violation. The difficulty of properly formulating the correct standard for recovery under such unique circumstances as presented here is amply illustrated by Petitioner's argument on the first issue, in which Petitioner is wholly unable to ignore the overriding contention found in the instant case—and not in other cases—that the acquired firm would have disappeared absent the acquisition (Brief for Petitioner, pp. 30-31). The unique nature of the immediate dispute should not be permitted to distort the standards of recovery properly applicable to plaintiffs injured by a violation of Section 7.

A. No Legal Basis Exists for Imposing Different Requirements of Proof on Section 7 Plaintiffs Than Are Applicable Generally.

As has been noted previously, Section 4 of the Clayton Act is the basis for private actions brought for violations of the antitrust laws, including both the Sherman Act and the Clayton Act. The cases uniformly discuss private actions in terms of whether the requirements of Section 4 have been met. See, for example, *Hawaii v. Standard Oil Co.* (1972), 405 U.S. 251, 260-262, 31 L.Ed.2d 184, 191-193; *Zenith Corp. v. Hazeltine, supra,* 395 U.S. 100, 114 n. 9; *Hanover Shoe v. United Shoe Mach.* (1968), 392 U.S. 481, 488-489, 20 L.Ed.2d 1231, 1238-1239. Section 4 itself

establishes the elements which have been consistently applied in all antitrust cases. These elements are as follows: (1) injury to the plaintiff ("any person who shall be injured in his business or property"), (2) proximately caused by ("by reason of"), and (3) a violation of the antitrust laws ("anything forbidden in the antitrust laws . . . .").

As this Court said in *Radovich v. Nat. Football League* (1957), 352 U.S. 445, at 454, "this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws." Section 4 contains no qualification regarding its applicability to the various substantive provisions of the antitrust laws. To the contrary, the fact that it carries forward, in virtually identical language, the treble damage provisions of former Section 7 of the Sherman Act, and extends these provisions to Clayton Act violations, reinforces the conclusion that the basic elements of a plaintiff's cause of action are the same for Sherman Act and Clayton Act violations. Once the violation is shown, if a plaintiff in the target area can prove he was damaged by that violation, the right to recovery arises. As this Court has stated:

> "[T]o state a claim upon which relief can be granted . . ., allegations adequate to show a violation and, in a private treble damage action, that plaintiff was damaged thereby are all the law requires."
>
> *Radiant Burners v. Peoples Gas Co.* (1961), 364 U.S. 656, 660.

The fact that Section 7 is a "tend to" statute does not change the general rule. For example, conduct

which has a "tendency" to create a monopoly may be actionable even though its actual results have not yet affected the economy adversely. If an offending practice has a "monopolistic tendency", then

> "[*I*]*t is not to be tolerated merely because the victim is just one merchant whose business is so small that his destruction makes little difference to the economy.* Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact the Sherman Act has consistently been read to forbid all contracts and combinations 'which "tend to create a monopoly," ' whether 'the tendency is a creeping one' or 'one that proceeds at full gallop.' [Citation omitted]" (Emphasis added).
>
> *Klor's v. Broadway-Hale Stores* (1959), 358 U.S. 207, 213-214.

These cases were summarized in a later comment by this Court to the effect that "we have held that the right of recovery of a plaintiff in a treble damage antitrust case does not depend at all on proving an economic injury to the public." *In Re McConnell* (1962), 370 U.S. 230 at 231.

No different result is reached in cases brought under the Clayton Act. Sections 2 and 3 of the Clayton Act, like Section 7, prohibit certain activities whose "effect . . . may be substantially to lessen competition or tend to create a monopoly . . . ." Like Section 7, Section 3 bans certain contracts (for example, requirements contracts) which are not inherently anti-competitive and are thus illegal only where the anti-competitive tendency is presented. *Tampa Electric Co. v. Nashville Co.* (1961), 365 U.S. 320, 327; *Brown Shoe Co. v.*

United States, supra, 370 U.S. at 330. The parallel nature of Sections 7, 2 and 3 has been expressly recognized by this Court:

> "Congress not only indicated that 'the tests of illegality [under § 7] are intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act,' but also chose for § 7 language virtually identical to that of § 3 of the Clayton Act, 15 U.S.C. § 14, ..."
>
> *Brown Shoe Co. v. United States,* 370 U.S. 294, 329.

Recently, in *Gulf Oil Corp. v. Copp Paving Co.* (1974), 419 U.S. 186, 42 L.Ed.2d 378, this Court again noted the similarity of Sections 3 and 7 of the Clayton Act:

> ". . . §§ 3 and 7 of the Clayton Act, . . . were intended to complement the Sherman Act and to facilitate achievement of its purposes by reaching, in their incipiency, acts and practices that promise, in their full growth, to impair competition in interstate commerce. * * *"
>
> *Gulf Oil Corp. v. Copp Paving Co.,* 419 U.S. 186, 201, 42 L.Ed.2d 378, 390.

We are aware of no case under Section 2 or 3 in which it has been held, or even contended, that a plaintiff must prove an actual lessening of competition or a monopoly before recovery of damages was allowed. The fact that all a plaintiff need prove to recover under Sections 2 and 3 is their violation and proximately resulting injury to his business or property is strong precedent for applying the same rule to actions brought for Section 7 violations.

B. The Third Circuit Was Correct in Not Requiring a Section 7 Plaintiff to Prove Actual Restraint of Trade or Monopoly as a Precondition to Recovery of Damages.

The Third Circuit, recognizing that to hold differently would in effect require a Section 7 plaintiff to prove a Sherman Act violation as a precondition to recovery, concluded that once a violation of Section 7 had been shown, the ordinary provisions of Section 4 applied. Petitioner's quarrel with the Circuit, while phrased in terms of what standard of recovery should be applicable, is in fact bottomed upon Petitioner's view that no violation of Section 7 occurred in the instant case. Petitioner argues that its rescuing of financially troubled bowling alleys prevented their elimination from the marketplace, and was truly pro-competitive. Upon such facts, Petitioner contends it would be unjust and contrary to the policy of the antitrust laws to allow Respondent a recovery. Implicit in all of Petitioner's arguments regarding what a Section 7 plaintiff must prove is the underlying assumption that the pro-competitive aspects of this acquisition (which arise exclusively out of the alleged fact that the acquired companies were "failing") should be sufficient to prevent any damage award against it. The rationale of the argument, however, is dependent not upon what standard should be applied for Section 7 recoveries, but whether there was in fact a violation of Section 7 in the first place. When the "failing company" issue is separated from the question of what standard of proof should be applicable to a Section 7 plaintiff, the Third Circuit's enunciation of the rule is consistent with prevailing antitrust doctrine and with the pronouncements of other courts. The Third Circuit in the instant case indicated that to have a recovery under Section 7, a private plaintiff must

prove a violation of the law, injury, and a causal relationship between the violation and the injury:

> "We hold, then, that a horizontal competitor of a company acquired by a deep pocket parent in violation of §7 can recover damages under §4 if it shows injury in fact causally related to the violator's presence in the market, whether or not that injury flows from or results in an actual lessening of competition. In this case there was sufficient evidence to go to the jury on the fact of such injury, although as we indicate hereafter there are difficulties with the manner in which the issue was framed in the court's charge." (Pet. App. 19a).

It should be noted that the Third Circuit, unlike Petitioner, correctly refers to the *violator's* presence in the market, this being the activity forbidden by Section 7. *Cf. United States v. du Pont & Co.* (1957), 353 U.S. 586, where this Court noted that Clayton Section 7 has the objective of preventing the evil results of an unlawful acquisition "which may be at or any time after the acquisition, depending upon the circumstances of the particular case." 353 U.S. at 597.

When the Third Circuit rejected Petitioner's plea to require Respondent to prove actual restraint of trade or monopoly, and instead opted for the traditional antitrust law standard, it was acting within the mainstream. The Third Circuit's approach is certainly not in "direct contradiction" to the views expressed by the Second Circuit in *Gottesman v. General Motors Corporation, supra,* 414 F.2d 956. That Court, after first discussing whether a treble damage action for a violation of Section 7 could be maintained (and in that context, making the statements quoted in Petitioner's Brief), very

carefully delineated the showing which the plaintiff would have to make on remand in order to recover:

> "Of course, plaintiffs cannot rest on a showing of a violation of section 7; they must, *as in private actions under other sections of the antitrust laws,* prove that they have been injured by the violation. However, the Supreme Court's finding that du Pont's stock ownership in General Motors constituted a 'potential' restraint of trade or monopolization hardly precludes a showing that a given party *was in fact injured by the prohibited acquisition, or that the section 7 violation proximately caused damage which might not in itself constitute a cause of action under the Sherman Act.* * * *" (Emphasis added).
>
> *Gottesman v. General Motors Corporation,* 414 F.2d 956, 961.

The Second Circuit concluded that the plaintiff in a Section 7 action must bear the same burden as do plaintiffs alleging violations of other sections of the antitrust laws. Specifically, the plaintiff must prove injury caused by "the violation", that is, injury caused "by the prohibited acquisition". There is nothing whatsoever in the *Gottesman* Opinion imposing any additional requirement on a private plaintiff.

Other Section 7 cases similarly apply the normal Section 4 elements in the Section 7 context. Thus, *Dailey v. Quality School Plan, Inc., supra,* 380 F.2d 484, 487-488, adopts the test of proximate cause used in cases alleging Sherman Act violations. Again, *Calnetics Corp. v. Volkswagen of America, Inc., supra,* CCH Trade Reg. Rep. ¶ 60,757, in reversing the trial court's dismissal on causation grounds of a treble dam-

age action based on a claimed violation of Section 7, held that the jury could find "at least some damages resulting from the acquisition" (p. 68,242). The court in *New Grant-Patten Milk Co. v. Happy Valley Farms, Inc.* (E.D.Tenn. 1963), 222 F.Supp. 319, 320, also applied the normal antitrust standards to a Section 7 claim. In the same manner, the court in *Zenith Vinyl Fabrics Corp. v. Ford Motor Company* (E.D. Mich. 1973), 357 F.Supp. 133, 137, applied the usual standards of causation. ("This requirement of proof of a causal connection applies to violations of Sections 1 and 2 of the Sherman Act as well as violations of Section 7 of the Clayton Act.")

On pages 27 through 29 of its Brief, Petitioner argues that "numerous" Section 7 cases have recognized that a private plaintiff must show "an actual lessening of competition or a monopoly." Petitioner conveys the impression that this is what the cited cases held by the use of material removed from its proper context. In fact, not a single one of the ten cases relied upon actually supports the proposition. Several of the cited cases involve parties who were held not to have the requisite standing to bring a private action, or as it is often phrased, not to be within the "target area" of the violation, and the others hinge not upon the standard of recovery to be applied but upon individual questions of causation and proof.[6]

The cases cited by Petitioner do demonstrate, however, that applying normal standards to Section 7 plaintiffs in no way will result in a flood of unjustifiable windfall recoveries. Initially, of course, a plaintiff will only be entitled to recover if an actual violation of Section 7 is proved. Thus, a case in which the acquisi-

[6]For the Court's convenience, a comprehensive discussion of these ten cases is attached hereto as Appendix A.

tion tends to bring about an increase of competition will be excluded from recovery at the outset. Next, a plaintiff will have to prove that his injury was in fact caused by the violation of the law. Moreover, the damages will have to be "proximate", which will presumably bar recovery for occurrences not reasonably foreseeable at the time of the violation. On the other hand, damages resulting from market entrenchment or from the "deep pocket" capabilities of the acquiring company, where such matters were foreseeable and formed a part of the rationale for holding the acquisition to be unlawful, would be recoverable. In addition, the plaintiff will have to satisfy the court that he is in the "target area" and has proper standing to complain of the violation. Thus, the existing rules are quite sufficient to assure that a defendant will not be a "guarantor" of its competitor's business. A competitor will have to establish a violation and will have to satisfy the rules of proximate cause and standing. It is neither necessary nor proper, under the requirements of Section 4 of the Clayton Act, to require that he prove more.

CONCLUSION.

The issue to which this Brief is addressed—what must a Section 7 plaintiff prove to recover damages under Section 4 of the Clayton Act—is made extremely difficult to analyze by virtue of the fact that the question accepted for review in effect incorporates the failing company defense. It assumes that any damages suffered were due to the mere continued presence of the acquired company in the industry and that, but for the acquisition, the presence of that company would have been eliminated. Traditional analysis teaches that the acquisition of a failing company does not violate Section 7. If the acquisition here is not in violation of the

law, it certainly could not provide the basis for the recovery of damages. Thus, if the second question accepted for review is answered in the affirmative, and this Court holds that the "failing company" defense has been established, there has been no violation of Section 7, and the question of what must be proved to recover damages becomes purely hypothetical. On the other hand, if no "failing company" defense is made out, and it is held that the acquired companies would have remained in the industry in any event, the first question becomes irrelevant as its factual premise will be incorrect. Under such facts, the "mere continued presence" in the industry of the acquired companies would not be a result of the acquisition.

Given such a factual matrix, it is easy to lose sight of the fact that the policy of the antitrust laws in general, and Section 7 in particular, is to prevent undue concentration of economic power. When an acquisition with no "failing company" justification is made in violation of Section 7, this preventative purpose of the law has been frustrated. Changes brought about by such an acquisition can cause an industry to become more concentrated and cause injury to competitors. Damages attributable to these actual results should be compensable. The goal of preventing undue concentration can best be attained by allowing plaintiffs within the "target area", who can prove that they suffered actual injury proximately caused by a violation of Section 7, to recover those damages.

Respectfully submitted,

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APPENDIX A.

The ten cases cited by Petitioner on pages 27 through 29 of its Brief are put forth as supporting the proposition that the lower courts have recognized that a private plaintiff must show actual restraint of trade or monopoly before a recovery can be had for a violation of Section 7. Read in context, the cases do not support the proposition, and there is no conflict between these cases and those which in fact recognize that a private plaintiff in a Section 7 case is to be treated in the same manner as any other antitrust plaintiff. As was pointed out previously, the cases relied upon by Petitioner in most instances involve not the question of what must be proved before recovery will be allowed, but, rather, the issue of whether the plaintiff was in the "target area" of the violation.

Seven of the cited cases involved parties who were held not to have the requisite standing to bring a private action. Taking these cases in the order of citation, the first is *Peterson v. Borden Co.* (7th Cir. 1931), 50 F.2d 644. The material quoted in Petitioner's Brief relates solely to the court's holding that a shareholder was not a person injured "by reason of" a violation of the antitrust laws. The court's reasoning was that lessened competition or monopoly would not hurt a shareholder. The case says nothing as to what a proper plaintiff would have to prove once he had demonstrated a violation of Section 7.

In *GAF Corporation v. Circle Floor Co., Inc.* (2nd Cir. 1972), 463 F.2d 752, the plaintiff was the target company in a takeover bid. The court held that the plaintiff could not state a cause of action under either Sections 1 and 2 of the Sherman Act or Section

7 of the Clayton Act since any harm brought on by the acquisition would be felt by competitors. Thus, the non-competitor plaintiff could not state a claim for damages to *its* business by reason of the violations. In short, it was not "injured by reason of" violations of the law. The case certainly does not purport to impose a restriction on Section 7 plaintiffs not equally applicable to all other plaintiffs. Rather, it stands for the proposition that a plaintiff in any antitrust case must show that the violation injured his competitive position. It is in this context that the material quoted in Petitioner's Brief appears. 463 F.2d at 757-759.

In *Reibert v. Atlantic Richfield Company* (10th Cir. 1973), 471 F.2d 727, the defendant was granted summary judgment on both the Sherman Act and Clayton Act claims brought by an employee of the company defendant had acquired. The court held that the employee had no standing and was not injured "by reason of" the alleged violations. As with the other cases cited by Petitioner, the quoted material occurs in the context of a discussion of the plaintiff's lack of standing to bring an antitrust action. It has nothing whatsoever to do with the question of what a plaintiff with standing would have to prove in order to establish his right to recovery.

In *Rayco Manufacturing Company v. Dunn* (N.D.Ill. 1964), 234 F.Supp. 593, a manufacturer was granted summary judgment on a counterclaim brought by a franchise dealer which alleged violations of Sections 3 and 7 of the Clayton Act and Section 1 of the Sherman Act. The material quoted by Petitioner appears in the following context:

> "Under Section 7 of the Clayton Act, a civil suit may lie upon a showing that (1) the acquisition did or reasonably might substantially lessen competition or create a monopoly, and (2) the complainant suffered some special damage to his business as a direct and proximate result of the acquisition. [Citations omitted] It is not enough that counterclaimant has suffered injury as a result of extraneous actions, such as Rayco's termination of the franchise on account of competitive purchasing. Rather, the injury must result from the lessened competition or monopoly itself. [Citations omitted]

> "Counterclaimant Dunn at no point in the voluminous pleadings is able to offer evidence showing this required proximate injury. A competitor of an acquiring or acquired corporation might have standing to bring such an action . . . ."
>
> Rayco Manufacturing Co. v. Dunn, 234 F. Supp. 593, 597.

Clearly the comments about "lessened competition" or "monopoly" were not intended to impose an additional requirement upon proper plaintiffs, such as a competitor, but were (in common with all of this line of cases) an explanation of why a party in the position of a terminated dealer was not within the scope of Section 4 of the Clayton Act.

The case of *Pandola v. Texaco, Inc.* (C.D.Cal. 1975), 1975—Trade Cas. ¶ 60,232, concerns a terminated dealer who was held to have suffered no injury to his business or property within the meaning of Section 4. The material quoted in Petitioner's Brief appears within the following context:

> "In order to be within the 'target area' of an alleged violation of Section 7 of the Clayton

> Act, and thus have standing to sue, a private litigant must demonstrate not only that its injury is causally related to the challenged acquisition, but also that its claimed injury results directly from the specific anticompetitive consequences proscribed by Section 7 itself, *i.e.*, 'lessened competition or monopoly itself.' "
>
> Pandola v. Texaco, Inc., 1975—Trade Cas. at 65,931.

It is obvious that the reference to "anticompetitive consequences" is expressly linked to the question of the "target area" of the violation. It is somewhat misleading to, as Petitioner did, quote the second half of the sentence as if it applied to a plaintiff admittedly within the "target area".

Zenith Vinyl Fabrics Corp. v. Ford Motor Company (E.D.Mich. 1973), 357 F.Supp. 133 involves a terminated distributor who was held not to have standing under Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act. The court nowhere states that a Section 7 plaintiff must prove actual restraint of trade or monopoly, but in fact discusses the plaintiff's action in terms of decisions rendered under Section 4 relating to all substantive antitrust violations. The court clearly equated the causal showing required under a Sherman Act claim with that of a Clayton Act claim, stating:

> "This requirement of proof of a causal connection applies to violations of Sections 1 and 2 of the Sherman Act as well as violations of Section 7 of the Clayton Act."
>
> Zenith Vinyl Fabrics Corp. v. Ford Motor Company, 357 F.Supp. 133, 137.

Kirihara v. Bendix Corporation (D.Haw. 1969), 306 F.Supp. 72, denied recovery to a terminated distributor. Again, the plaintiff's action was unsuccessful because he was not deemed to be within the "target area" of the acquisition. 306 F.Supp. at 88-90.

Many of the seven cases just discussed, as well as Petitioner's Brief, cite the case of *Conference of Studio Unions v. Loew's Inc.* (9th Cir. 1951), 193 F.2d 51, *cert. den.* (1952), 342 U.S. 919. That case contains the statement that: "Recovery and damages under the anti-trust law is available to those who have been directly injured by the lessening of competition and withheld from those who seek the windfall of treble damages because of incidental harm." 193 F.2d at 55. Factually, the case involved an action by an association of labor unions, and individual members of those unions, seeking recovery for alleged Sherman Act violations. The language just quoted appears in the context of the court's holding that the plaintiffs were not "within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry." *Conference of Studio Unions v. Loew's Inc.* is, when viewed in context, a standing case, not concerned with the elements which must be proven in order to make out a claim for an antitrust violation. The fact that many of the Section 7 cases using similar language in a similar context cite it as authority simply strengthens the conclusion that their concern, too, was with concepts of standing, "target area", and incidental damage, and not with delineating elements of proof which a suitable plaintiff (such as a competitor) would have to satisfy.

Another of the cases cited by Petitioner, *Peltier v. Humble Oil & Refining Co.* (D.Ore. 1972), 1973-

1 Trade Cas. ¶ 74,278, also involves a terminated distributorship, but under circumstances in which the court did view him as being in effect a competitor and within the target area. While the defendant contended that the plaintiff, in order to recover for an alleged Section 7 violation, would have to show actual lessening of competition (*Id.* at 93,301), the court disagreed and took the position that if the defendant's antitrust violation forced the plaintiff out of business, the plaintiff could recover regardless of whether his injury or elimination from the business had an adverse impact on competition.

> "Defendant's position is since competition among distributors in the three-county area is healthy, plaintiffs are foreclosed from showing illegality. * * *
>
> "[Plaintiff] does not contest defendant's factual showing that his elimination had no effect on competition. However, a person may suffer legal damage, regardless of his own impact on competitive conditions, if it is an illegal suppression of competition which forces him out of the market. In *Klor's v. Broadway-Hale Stores* [1959 Trade Cases ¶69,316], 395 U.S. 207 (1959), the Supreme Court rejected the argument that defendants were immunized from suit under Sections 1 and 2 of the Sherman Act simply because the target of their illegal action was a relatively insignificant competitor among several hundred others.
>
> * * * *
>
> "If that acquisition was illegal under Section 7 because of its effect on competition in the three-county area, then he was injured because of something forbidden by the antitrust laws."
>
> Peltier v. Humble Oil & Refining Co., 1973-1 Trade Cas. at 93,301-93,303.

Petitioner cites one case involving a competitor. But that case, *Dole Valve Company v. Perfection Bar Equipment, Inc.* (N.D.Ill. 1970), 311 F.Supp. 459, similarly fails to support Petitioner's contention that Section 7 plaintiffs have a burden not placed on other antitrust plaintiffs. A reading of *Dole Valve* makes it clear that the plaintiff lost that case simply because it failed to prove causation:

> "This evidence, even when viewed in the light most favorable to the defendant, United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962), fails to show any causal connection between the acquisition and Perfection's injury. At best, the Klett affidavit shows only that K-Way made eight sales for which Perfection was competing. There is a total absence of evidence that the acquisition was in any way responsible for these lost sales."
>
> Dole Valve Company v. Perfection Bar Equipment, Inc., 311 F.Supp. 459, 462.

The material quoted by Petitioner then follows.

The final case cited by Petitioner, *Smith-Victor Corporation v. Sylvania Electric Products, Inc.* (N.D.Ill. 1965), 242 F.Supp. 315, 320, dismissed a complaint alleging that Section 7 had been violated, where the complaint merely alleged an acquisition and a lessening of competition, without alleging that the lessening of competition resulted from the acquisition. In short, the plaintiff in that case did not properly allege a

violation of Section 7. The case says nothing as to what is required of a plaintiff once a violation of Section 7 is established.

It is clear that the line of authority presented by the Petitioner does *not* establish that "the 'injury' that must be shown in order to recover is injury flowing from . . . an actual lessening of competition or a monopoly." Rather, it is apparent that insofar as the courts have addressed the standard of recovery required under Section 4 of a private plaintiff, they have simply required him to meet the same standard of proof normally required, namely a showing that the violation proximately caused injury to the plaintiff in his business or property.

MOTION FILED
AUG 18 1976

No. 75-904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

BRUNSWICK CORPORATION, *Petitioner,*

v.

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC., *Respondents.*

MOTION FOR LEAVE TO FILE AN OPPOSITION TO MOTION OF PUREX CORPORATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

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Come now The Procter & Gamble Company and The Clorox Company, by their undersigned counsel, pursuant to Rules 35 and 42 of the Rules of this Court, and ask leave to file the annexed Memorandum In Opposition to the Motion of Purex Corporation for Leave to File a Brief *amicus curiae* in this case, or, in the alter-

native, to file such Memorandum as a Reply Brief *amicus curiae.*[1]

Purex seeks to be heard in this case on the ground that, like respondents, it is a plaintiff in an action for treble damages under Section 7 of the Clayton Act. Movants, The Procter & Gamble Company and The Clorox Company, are the defendants whom Purex is suing. They thus have a vital interest in whatever Purex has to say about that action, and believe that the concise Memorandum they seek leave to file will aid the Court in passing on the Purex Motion and in considering Purex's Brief *amicus curiae,* if it is accepted for filing.

Respectfully submitted,

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August 18, 1976

[1] Consent of the parties to the filing of this Memorandum was requested but not given.

IN THE

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v.

PUEBLO BOWL-O-MAT, INC., BOWL-O-MAT PARAMUS OPERATIONS and HOLIDAY BOWL-O-MAT, INC., *Respondents.*

MEMORANDUM IN OPPOSITION TO MOTION OF PUREX CORPORATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OR, IN THE ALTERNATIVE, REPLY BRIEF AMICUS CURIAE

STATEMENT OF INTEREST

The Procter & Gamble Company and The Clorox Company, defendants in the treble damage action brought by Purex, urge that the Court deny Purex leave to file a brief *amicus curiae* in this case. The apprehensions that apparently led Purex to seek leave to file such a brief were recently realized when the United States District Court for the Central District of California following a non-jury trial and in a comprehensive analysis of a lengthy record entered judgment for

Procter and Clorox on the ground that Purex had failed at trial to prove its allegations. (*Purex Corp.* v. *Procter & Gamble Co.,* CCH Trade Reg. Rep. ¶ 60,985, July 23, 1976.)

Purex may appeal this decision to the Court of Appeals for the Ninth Circuit, and it is of course possible that the matter may ultimately come before this Court. Meanwhile, however, the pending motion must be recognized as an effort by Purex to persuade this Court to include in its decision in the instant case language that will lend support to an effort by Purex to reverse the adverse judgment it has suffered. The Purex motion fails to state adequate grounds for *amicus* participation here. In addition, the intervening opinion of the District Court requires Purex to overcome numerous factual findings supported by substantial evidence before it will even become necessary for the Court of Appeals to decide whether the instant case bears in any way on Purex's claims. Finally, Purex's proposed *amicus* brief fails to inform the Court of the facts to which Purex would apply the language it seeks, or of the anticompetitive consequences of the standard of Section 7 recovery that it asks the Court to promulgate.

ARGUMENT

1. The very considerations put forth by Purex in urging acceptance of its brief make clear that its intrusion in this matter is wholly unwarranted. Purex's basic position is that the facts presented in the instant case "are certainly atypical." (Purex Motion, p. 3) It goes on to say that

> "Such unique facts make it difficult to arrive at a general standard for private recovery of injuries caused by illegal acquisitions." (*Id.*)

Nonetheless, Purex proceeds for some 30 pages to urge that the Court do precisely that, wholly without regard to the facts in the instant case or to the facts underlying Purex's own claim.

The stated pretext for Purex's effort to influence the Court to say something that would provide aid and comfort in advancing its claim is its concern that the Court, without its help, may not appreciate the relationship between the two questions on which certiorari has been granted in this case. It may be fairly assumed, however, that there is nothing special about this case that would impair the Court's abilities, with the assistance of counsel for the parties, to discern the relationship between the questions comprehended in the writ that has issued.

It is apparent, however, that Purex is not genuinely concerned with sorting out the questions presented for review in this case. What it asks the Court to do, despite "the unique nature of the immediate dispute" (Purex Brief, p. 17), is to articulate general standards of recovery applicable to all damage actions under Section 7. It is thus clear that the brief Purex would put before the Court is not designed to assist in the resolution of the instant case and should be rejected on that ground alone.

2. The issuance of the District Court's opinion in *Purex Corp.* v. *Procter & Gamble Co., supra,* subsequent to the filing of Purex's motion herein, has substantially diminished any likelihood that a decision in this case will affect Purex's efforts to recover damages from Procter and Clorox. That opinion first adopts the rule stated in *Gottesman* v. *General Motors Corp.,* 414 F.2d 956, 961 (2d Cir. 1969), *i.e.,* that private dam-

ages may be recovered under Section 7 only if the threat to competition that resulted in the violation "ripens into reality." The resulting judgment for the defendants is based on the court's factual conclusions that Clorox's continuing marketing success was not attributable to its acquisition by Procter, while

> "[t]he comparative inferiority of Purex in marketing liquid bleach stemmed principally from decisions of its own management, rather than having been imposed by Clorox." CCH Trade Reg. Rep., ¶ 60,985 at 69,361.[1]

The decision of the Court of Appeals in the instant case was referred to only briefly and tangentially by the District Court. It observed, in response to Purex's heavy reliance on that decision, that if a passage in that opinion "may be inferred to apply to a situation in which the only causal relationship between the violator's presence in the market and the claimed injury is the plaintiff's fear of the violator's prospective competition, I cannot accept the proposition." (CCH Trade Reg. Rep. ¶ 60,985 at 69,373). In support of this conclusion the District Court reasoned:

> "The doctrine urged by the plaintiff would encourage a competitor, when challenged by a merger, to develop or simulate an attitude of fear and do nothing in the hope of recovering damages for loss of profits that he would have refrained from trying to earn. If the merger is ultimately upheld, the timid competitor has lost much needed ground to his rival. On the other hand, if damages are recovered, they are either a windfall or an unprecedented reward for being fainthearted. In either event, the concept of a cause of action for damages occasioned by fear of a business rival is contrary to the long established principle that the public interest is best served when the challenge of strong competition is met head-on." (*Id.*)

[1] The District Court also rejected an argument that Purex's national expansion plans were frustrated by the acquisition as "an after-thought, induced by the contemplation of this litigation" (*id.* at 69,361), and held that defendants had not violated the Sherman Act. (*Id.* at 69,373).

In no event will this issue be reached on appeal unless Purex persuades the Ninth Circuit that the District Court's factual findings on such questions as credibility, causation, and impact are clearly erroneous. Only then would it become necessary for the Court of Appeals to determine whether and how to apply such holding as results from this Court's consideration of the instant case. Purex's interest in the case at bar is therefore remote and contingent at best.

3. As may be seen from the foregoing passages from the District Court's decision rejecting Purex's claims against Procter and Clorox, Purex's basic position is that Section 7 of the Clayton Act should shield it from normal competition from a company acquired in violation of Section 7. In short, it would have this Court reject the established principle that "competition based on efficiency is a positive value that the antitrust laws strive to protect." *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616, 623 (1975). And, by indirection, it would also have this Court ignore its observation in *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 320 (1962), that "the legislative history [of Section 7] illuminates congressional concern with the protection of *competition*, not *competitors* . . . ." (Emphasis in the original.) The

interpretation of the antitrust laws advanced by Purex would plainly "stand the public interest on its head and . . . suggest that the public would be better off if the plaintiff found itself without competition." Areeda, *Antitrust Violations Without Damage Recoveries,* 89 Harv. L. Rev. 1127, 1134 (1976) (criticizing the Third Circuit's decision in the instant case). It is submitted that under no circumstances could it have been intended by Congress that the treble damage provisions of the antitrust laws be so applied.

CONCLUSION

The Court should deny Purex's motion for leave to file a brief *amicus curiae.* If that motion is granted this Memorandum should be accepted as a reply brief *amicus curiae.*

Respectfully submitted,

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